

**Monson Lee Durham**  
**RN102900743**  
**Docket No. 2011-2356-PST-E**

**Order Type:**

Default Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

N/A

**Location(s) Where Violation(s) Occurred:**

10601 Martin Luther King Jr Blvd, Houston, Harris County

**Type of Operation:**

inactive underground storage tanks (USTs")

**Other Significant Matters:**

|   |      |
|---|------|
| Additional Pending Enforcement Actions: | None |
| Past-Due Penalties:                     | None |
| Past-Due Fees:                          | None |
| Other:                                  | None |
| Interested Third-Parties:               | None |

|   |                |
|---|----------------|
| <b>Texas Register Publication Date:</b> | August 3, 2012 |
|---|----------------|

|                           |      |
|---------------------------|------|
| <b>Comments Received:</b> | None |
|---------------------------|------|

**Penalty Information**

|                                       |         |
|---------------------------------------|---------|
| <b>Total Penalty Assessed:</b>        | \$5,500 |
| <b>Total Paid to General Revenue:</b> | \$0     |
| <b>Total Due to General Revenue:</b>  | \$5,500 |

**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Average

|                      |    |
|----------------------|----|
| <b>Major Source:</b> | No |
|----------------------|----|

|                                    |      |
|------------------------------------|------|
| <b>Statutory Limit Adjustment:</b> | None |
|------------------------------------|------|

|                                   |                |
|-----------------------------------|----------------|
| <b>Applicable Penalty Policy:</b> | September 2002 |
|-----------------------------------|----------------|

**Monson Lee Durham**  
**RN102900743**  
**Docket No. 2011-2356-PST-E**

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** September 16, 2010; March 23, 2011; November 15, 2011  
**Date(s) of NOV(s):** October 25, 2010; April 18, 2011  
**Date(s) of NOE(s):** December 16, 2011

**Violation Information**

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
Respondent no longer owns the Facility as of March 5, 2012.

**Technical Requirements:**  
N/A

**Litigation Information**

**Date Petition(s) Filed:** May 21, 2012  
**Date Green Card(s) Signed:** Unclaimed  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Joel Cordero, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
James Murphy, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Heather Podlipny, Enforcement Division, (512) 239-2603  
**TCEQ Regional Contact:** Nicole Bealle, Houston Regional Office, 713-767-3500  
**Respondent:** Monson Lee Durham, 20188 Cross Pasture Road, Waller, TX 77484-5348  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 19-Dec-2011 | <b>Screening</b> | 22-Dec-2011 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 26-Mar-2012 |                  |             |                |  |

|  |                   |                           |       |
|--|-------------------|---------------------------|-------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                   |                           |       |
| <b>Respondent</b>                      | Monson Lee Durham |                           |       |
| <b>Reg. Ent. Ref. No.</b>              | RN102900743       |                           |       |
| <b>Facility/Site Region</b>            | 12-Houston        | <b>Major/Minor Source</b> | Minor |

|  |                        |                              |                    |
|--|------------------------|------------------------------|--------------------|
| <b>CASE INFORMATION</b>                |                        |                              |                    |
| <b>Enf./Case ID No.</b>                | 43193                  | <b>No. of Violations</b>     | 1                  |
| <b>Docket No.</b>                      | 2011-2356-PST-E        | <b>Order Type</b>            | 1660               |
| <b>Media Program(s)</b>                | Petroleum Storage Tank | <b>Government/Non-Profit</b> | No                 |
| <b>Multi-Media</b>                     |                        | <b>Enf. Coordinator</b>      | Heather Podlipny   |
|  |                        | <b>EC's Team</b>             | Enforcement Team 4 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$0                    | <b>Maximum</b>               | \$10,000           |

## Penalty Calculation Section

|   |                   |         |
|---|-------------------|---------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | \$5,000 |
|---|-------------------|---------|

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

|                           |                   |                                |       |
|---------------------------|-------------------|--------------------------------|-------|
| <b>Compliance History</b> | 10.0% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | \$500 |
|---------------------------|-------------------|--------------------------------|-------|

|              |  |
|--------------|--|
| <b>Notes</b> | Enhancement for two NOVs with same/similar violations. |
|--------------|--|

|                    |    |                  |                   |     |
|--------------------|----|------------------|-------------------|-----|
| <b>Culpability</b> | No | 0.0% Enhancement | <b>Subtotal 4</b> | \$0 |
|--------------------|----|------------------|-------------------|-----|

|              |  |
|--------------|--|
| <b>Notes</b> | The Respondent does not meet the culpability criteria. |
|--------------|--|

|  |                   |     |
|--|-------------------|-----|
| <b>Good Faith Effort to Comply Total Adjustments</b> | <b>Subtotal 5</b> | \$0 |
|--|-------------------|-----|

|                         |                   |                   |     |
|-------------------------|-------------------|-------------------|-----|
| <b>Economic Benefit</b> | 0.0% Enhancement* | <b>Subtotal 6</b> | \$0 |
|-------------------------|-------------------|-------------------|-----|

|                            |          |                                   |
|----------------------------|----------|-----------------------------------|
| Total EB Amounts           | \$13,074 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$19,000 |                                   |

|                             |                       |         |
|-----------------------------|-----------------------|---------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$5,500 |
|-----------------------------|-----------------------|---------|

|   |      |                   |     |
|---|------|-------------------|-----|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | 0.0% | <b>Adjustment</b> | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

|              |  |
|--------------|--|
| <b>Notes</b> |  |
|--------------|--|

|                             |         |
|-----------------------------|---------|
| <b>Final Penalty Amount</b> | \$5,500 |
|-----------------------------|---------|

|                                   |                               |         |
|-----------------------------------|-------------------------------|---------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$5,500 |
|-----------------------------------|-------------------------------|---------|

|                 |  |           |                   |     |
|-----------------|--|-----------|-------------------|-----|
| <b>DEFERRAL</b> |  | Reduction | <b>Adjustment</b> | \$0 |
|-----------------|--|-----------|-------------------|-----|

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

|              |  |
|--------------|--|
| <b>Notes</b> | Deferral not offered for non-expedited settlement. |
|--------------|--|

|                        |         |
|------------------------|---------|
| <b>PAYABLE PENALTY</b> | \$5,500 |
|------------------------|---------|

**Screening Date** 22-Dec-2011

**Docket No.** 2011-2356-PST-E

**PCW**

**Respondent** Monson Lee Durham

*Policy Revision 2 (September 2002)*

**Case ID No.** 43193

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102900743

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Heather Podlipny

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

| Component                     | Number of...   | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs                          | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )  | 2                 | 10%     |
|                               | Other written NOVs   | 0                 | 0%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )  | 0                 | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0                 | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )                              | 0                 | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0                 | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government ( <i>number of counts</i> )   | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events ( <i>number of events</i> )   | 0                 | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )     | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )  | 0                 | 0%      |
| <i>Please Enter Yes or No</i> |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

**Adjustment Percentage (Subtotal 2)** 10%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for two NOVs with same/similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 10%

Screening Date 22-Dec-2011

Docket No. 2011-2356-PST-E

PCW

Respondent Monson Lee Durham

Policy Revision 2 (September 2002)

Case ID No. 43193

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102900743

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Heather Podlipny

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank ("UST") system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 37

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and a grid for marking events.

Violation Base Penalty \$5,000

Two monthly events are recommended for the four USTs based on documentation of the violation during the November 15, 2011 record review date to the December 22, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table with columns: Effort (Extraordinary, Ordinary, N/A) and Timing (Before NOV, NOV to EDPRP/Settlement Offer).

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$13,074

Violation Final Penalty Total \$5,500

This violation Final Assessed Penalty (adjusted for limits) \$5,500

## Economic Benefit Worksheet

**Respondent** Monson Lee Durham  
**Case ID No.** 43193  
**Req. Ent. Reference No.** RN102900743  
**Media** Petroleum Storage Tank  
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$  |           |               |            |     |                |               |           |

### Delayed Costs

|                          |          |             |             |       |          |     |          |
|--------------------------|----------|-------------|-------------|-------|----------|-----|----------|
| Equipment                |          |             |             | 0.00  | \$0      | \$0 | \$0      |
| Buildings                |          |             |             | 0.00  | \$0      | \$0 | \$0      |
| Other (as needed)        |          |             |             | 0.00  | \$0      | \$0 | \$0      |
| Engineering/construction |          |             |             | 0.00  | \$0      | \$0 | \$0      |
| Land                     |          |             |             | 0.00  | \$0      | n/a | \$0      |
| Record Keeping System    |          |             |             | 0.00  | \$0      | n/a | \$0      |
| Training/Sampling        |          |             |             | 0.00  | \$0      | n/a | \$0      |
| Remediation/Disposal     |          |             |             | 0.00  | \$0      | n/a | \$0      |
| Permit Costs             |          |             |             | 0.00  | \$0      | n/a | \$0      |
| Other (as needed)        | \$19,000 | 22-Dec-1998 | 22-Sep-2012 | 13.76 | \$13,074 | n/a | \$13,074 |

Notes for DELAYED costs

Estimated cost to permanently remove from service four USTs with a combined capacity of 19,000 gallons at \$1.00 per gallon. The Date Required is the date when the Respondent was required to upgrade the UST system and the Final Date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

|                               |  |  |  |      |     |     |     |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal                      |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Personnel                     |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$19,000

**TOTAL**

\$13,074

# Compliance History

Customer/Respondent/Owner-Operator: CN601471659 DURHAM, MONSON LEE Classification: AVERAGE Rating: 3.00  
Regulated Entity: RN102900743 MONSON LEE DURHAM Classification: AVERAGE Site Rating: 3.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 42156  
Location: 10601 MARTIN LUTHER KING JR BLVD, HOUSTON, TX, 77048  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: January 05, 2012  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 05, 2007 to January 05, 2012  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Heather Podlipny Phone: 512-239-2603

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If **YES**, who is the current owner/operator? N/A
4. If **YES**, who was/were the prior owner(s)/operator(s)? N/A
5. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 10/25/2010 | (864722) |
| 2 | 04/18/2011 | (911945) |
| 3 | 12/16/2011 | (971236) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 10/25/2010 (864722) CN601471659**
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to perform the permanent removal of an underground petroleum storage tank that has not met upgrade requirements. At the time of investigation, no evidence of overfill protection, release detection, or corrosion protection were noted.
- Date: 04/18/2011 (911945) CN601471659**
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to perform the permanent removal of an underground petroleum storage tank that has not met upgrade requirements. At the time of investigation, no evidence of overfill protection, release detection, or corrosion protection were noted.
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MONSON LEE DURHAM;  
RN102900743**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-2356-PST-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Monson Lee Durham ("Respondent").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Respondent owned, as defined in 30 TEX. ADMIN. CODE § 334.2(73), property with an inactive underground storage tank ("UST") system and a former gasoline service station located at 10601 Martin Luther King Jr Blvd in Houston, Harris County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During investigations conducted on September 16, 2010, and March 23, 2011, and a record review conducted on November 15, 2011, a TCEQ Houston Regional Office investigator documented that Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
3. Respondent received notice of the violation on or about December 21, 2011.
4. The Executive Director recognizes that Respondent no longer owns the Facility as of March 5, 2012.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Monson Lee Durham" (the "EDPRP") in the TCEQ Chief Clerk's office on May 21, 2012.

6. By letter dated May 21, 2012, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### **ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Monson Lee Durham; Docket No. 2011-2356-PST-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
5. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF JOEL CORDERO**

**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

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§

"My name is Joel Cordero. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Monson Lee Durham" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on May 21, 2012.

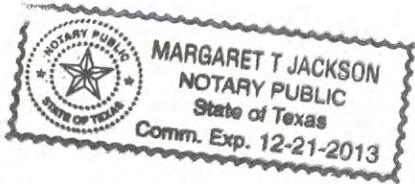
The EDPRP was mailed to Respondent's last known address on May 21, 2012, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

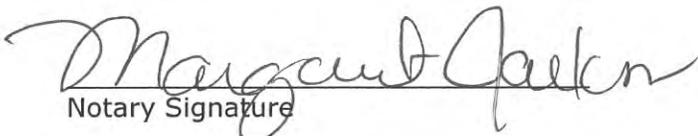
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

  
\_\_\_\_\_  
Joel Cordero, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Joel Cordero, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 13<sup>th</sup> day of July, A.D. 2012.



  
\_\_\_\_\_  
Notary Signature