

**Brian K. Gay**  
**RN103636262**  
**Docket No. 2012-2104-OSI-E**

**Order Type:**

Default Order

**Media:**

OSI

**Small Business:**

Yes

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

3930 Live Oak Street in Damon, Brazoria County;

2544 Saw Grass Lane, Kountze, Hardin County

**Type of Operation:**

on-site sewage facility ("OSSF") installer, evaluator, and maintenance provider

**Other Significant Matters:**

Additional Pending Enforcement Actions: 2013-0391-OSI-E (Default Order)

Past-Due Penalties: None

Past-Due Fees: None

Other: None

Interested Third-Parties: None

**Texas Register Publication Date:** December 20, 2013**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$2,450**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$2,450**Compliance History Classifications:**

Person/CN – N/A

Site/RN – N/A

**Major Source:** No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** September 2011

**Brian K. Gay**  
**RN103636262**  
**Docket No. 2012-2104-OSI-E**

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** September 12, 2012  
**Date(s) of NOV(s):** August 8, 2012; October 29, 2012  
**Date(s) of NOE(s):** September 19, 2012

**Violation Information**

Failed to meet the minimum required separation distance for an OSSF irrigation field of 100 feet from the edge of the surface application spray area to a private water well [30 TEX. ADMIN. CODE § 285.31(d) and 285.91(10)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
None

**Technical Requirements:**

1. Within 30 days, update operational procedures to ensure that all future surface application areas for spray irrigation installation meet the minimum required separation distance.
2. Within 45 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** June 11, 2013  
**Date Green Card(s) Signed:** June 13, 2013  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Vic McWherter, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Jacquelyn Green, Enforcement Division, (512) 239-2587

**TCEQ Regional Contact:** Ronald Hebert, Beaumont Regional Office, (409) 898-3838

**Respondent:** Brian K. Gay, P.O. Box 426, Damon, Texas 77430

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	24-Sep-2012	<b>Screening</b>	8-Oct-2012	<b>EPA Due</b>	
	<b>PCW</b>	22-Nov-2013				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Brian K. Gay
<b>Reg. Ent. Ref. No.</b>	RN103636262
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	45199	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-2104-OSI-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	On-Site Sewage Disposal	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jacquelyn Green
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$5,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,500
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
<b>Compliance History</b>	<b>30.0%</b> Enhancement <b>Subtotals 2, 3, &amp; 7</b>	\$450

Notes: Enhancement for two NOVs with same/similar violations and one order with denial of liability.

<b>Culpability</b>	No	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$551	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$600		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,950
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>25.6%</b>	<b>Adjustment</b>	\$500
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost associated with Violation No. 1.

<b>Final Penalty Amount</b>	\$2,450
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,450
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<b>DEFERRAL</b>	<b>0.0%</b> Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$2,450
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**Screening Date** 8-Oct-2012

**Docket No.** 2012-2104-OSI-E

**PCW**

**Respondent** Brian K. Gay

*Policy Revision 3 (September 2011)*

**Case ID No.** 45199

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN103636262

**Media [Statute]** On-Site Sewage Disposal

**Enf. Coordinator** Jacquelyn Green

### 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> )	1	20%
	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)** 30%

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

N/A

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

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

Unclassified

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

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for two NOVs with same/similar violations and one order with denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 30%

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 30%

Screening Date 8-Oct-2012

Docket No. 2012-2104-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 45199

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 285.31(d) and 285.91(10)

Violation Description Failed to meet the minimum required separation distance for an OSSF irrigation field of 100 feet from the edge of the surface application spray area to a private water well. Specifically, the Respondent installed an OSSF spray irrigation field in Kountze, Hardin County, Texas, and the edge of the surface application area was located 25 feet and 97 feet, respectively, from two private water wells.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential	x			

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0.0%

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 a result of the violation.

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 2 26 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,500

Two monthly events are recommended, one for each well, for the record review date of September 12, 2012 to the screening date of October 8, 2012.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$551

Violation Final Penalty Total \$2,450

This violation Final Assessed Penalty (adjusted for limits) \$2,450

# Economic Benefit Worksheet

**Respondent** Brian K. Gay  
**Case ID No.** 45199  
**Reg. Ent. Reference No.** RN103636262  
**Media Violation No.** On-Site Sewage Disposal  
 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)	\$100	2-Aug-2012	12-Jul-2013	0.94	\$5	n/a	\$5

**Notes for DELAYED costs**  
 Estimated cost to implement procedures to ensure that all minimum required separation distances are maintained. Date required is the initial date that the violation was documented. Final date is the anticipated 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)	\$500	2-Aug-2012	12-Jul-2013	1.86	\$47	\$500	\$547

**Notes for AVOIDED costs**  
 Estimated cost to provide a well plugging report for the abandoned well verifying that the well has been plugged and a well drilling report for the new well verifying that the well is pressure cemented.

Approx. Cost of Compliance \$600

**TOTAL** \$551

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# Compliance History Report

**PUBLISHED** Compliance History Report for CN602155236, RN103636262, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN602155236, Brian K Gay

**Classification:** NOT APPLICABLE **Rating:** N/A

**Regulated Entity:** RN103636262, GAY, BRIAN K

**Classification:** NOT APPLICABLE **Rating:** N/A

**Complexity Points:** N/A

**Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** 3930 Live Oak Street in Damon, Brazoria County, Texas

**TCEQ Region:** REGION 12 - HOUSTON

**ID Number(s): ON SITE SEWAGE FACILITY LICENSING**

MAINTENANCE PROVIDER LICENSE MP0000815

INSTALLER II LICENSE OS0027817

EVALUATOR LICENSE OS0029577

**Compliance History Period:** September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** March 22, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** March 22, 2008 to March 22, 2013

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Jacquelyn Green

**Phone:** (512) 239-2587

## Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, 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

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

- 1 **Effective Date:** 08/21/2010 **ADMINORDER 2010-0203-OSI-E (1660 Order-Agreed Order With Denial)**  
Classification: Major  
Citation: 30 TAC Chapter 285, SubChapter F 285.61(4)  
Description: Failure to ensure that an Authorization to Construct has been issued prior to beginning construction of four OSSFs in Jasper County, Texas.

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

### **D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

### **E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 **Date:** 08/08/2012 (1023116)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 285, SubChapter D 285.31(d)  
30 TAC Chapter 285, SubChapter I 285.91(10)  
Description: Failed to meet the minimum required separation distance of 100 feet for OSSFs.
- 2 **Date:** 10/29/2012 (1041395)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 285, SubChapter D 285.32(a)(3)  
Description: Failed to meet the minimum slope requirements on sewer pipe from the building to the tank of 1/8" fall per foot of pipe.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 285, SubChapter A 285.7  
Description: Failure by Brian Gay to install a weather resistant maintenance tag on the system.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 285, SubChapter D 285.33(d)(2)(E)  
Description: Failure by Brian Gay to install the minimum required spray field application area.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 285, SubChapter A 285.3(d)(2)  
Description: Failed to notify the Region 10 Office at least 5 working days before the date the OSSF will be ready for inspection.

Self Report? NO Classification: Moderate  
Citation: 5B THSC Chapter 366, SubChapter A 366.051(a)  
Description: Failed to hold a permit and approved plan to construct, alter, repair, or extend an on-site sewage disposal system.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 285, SubChapter F 285.64(a)(3)  
30 TAC Chapter 285, SubChapter I 285.91(4)  
Description: Failure by Brian Gay to perform routine maintenance as specified in the maintenance contract.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 285, SubChapter D 285.32(a)(2)  
Description: Failure by Brian Gay to make all PVC connections and joints water tight.

**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

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BRIAN K. GAY;  
RN103636262**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2012-2104-OSI-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 ch. 7, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Brian K. Gay ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent, whose business office is located at 3930 Live Oak Street in Damon, Brazoria County, Texas (the "Business"), provides maintenance, constructs, installs, alters, and/or repairs, for compensation, On-Site Sewage Facilities ("OSSFs") as defined in 30 TEX. ADMIN. CODE § 285.2(45). Respondent holds and maintains OSSF Maintenance Provider License No. MP0000815 and OSSF Installer II License No. OS0027817, which authorize Respondent to provide maintenance for, construct, install, alter, and/or repair OSSFs. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. HEALTH & SAFETY CODE § 366.011.
2. During a record review conducted on September 12, 2012, a TCEQ Beaumont Regional Office investigator documented that Respondent failed to meet the minimum required separation distance for an OSSF irrigation field of 100 feet from the edge of the surface application spray area to a private water well. Specifically, Respondent installed an OSSF spray irrigation field in Kountze, Hardin County, Texas, and the edge of the surface application area was located 25 feet and 97 feet, respectively, from two private water wells.
3. Respondent received notice of the violation on or about September 24, 2012.
4. 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 Brian K. Gay" (the "EDPRP") in the TCEQ Chief Clerk's office on June 11, 2013.
5. By letter dated June 11, 2013, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on June 13, 2013, as evidenced by the signature on the card.
6. 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. HEALTH & SAFETY CODE ch. 366 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to meet the minimum required separation distance for an OSSF irrigation field of 100 feet from the edge of the surface application spray area to a private water well, in violation of 30 TEX. ADMIN. CODE § 285.31(d) and 285.91(10).
3. As evidenced by Findings of Fact Nos. 4 and 5, 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 (b)(1).
4. As evidenced by Finding of Fact No. 6, 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 two thousand four hundred fifty dollars (\$2,450.00) 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 two thousand four hundred fifty dollars (\$2,450.00) 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: Brian K. Gay; Docket No. 2012-2104-OSI-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. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Respondent shall update operational procedures to ensure that all future surface application areas for spray irrigation installations meet the minimum required separation distance, in accordance with 30 TEX. ADMIN. CODE §§ 285.31(d) and 285.91(10).
  - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team  
Texas Commission on Environmental Quality  
Enforcement Division, MC 149A  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Ronald Hebert, Water Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Fwy.  
Beaumont, TX 77703-1830

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
6. 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.
7. 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.

8. 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.
9. 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.
10. 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 KARI L. GILBRETH**

**STATE OF TEXAS**

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§  
§

**COUNTY OF TRAVIS**

"My name is Kari L. Gilbreth. 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 Brian K. Gay" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 11, 2013.

The EDPRP was mailed to Respondent's last known address on June 11, 2013, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on June 13, 2013, as evidenced by the signature on the card.

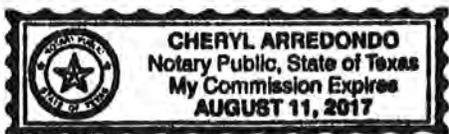
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

  
\_\_\_\_\_  
Kari L. Gilbreth, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 20th day of November, A.D. 2013.

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



Notary without Bond