

**SOAH DOCKET NO. 582-08-0036
TCEQ DOCKET NO. 2007-0119-WQ-E**

**EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner**

V.

**BRUCE'S, INC.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess \$3,950 in administrative penalties against Bruce's, Inc. (Bruce's or Respondent). The ED alleges that Respondent violated the Texas Water Code by failing to prevent the unauthorized discharge of contaminated storm water that caused a fish kill in a downstream pond. Bruce's denies being the source of the contaminants. The Administrative Law Judge (ALJ), finding that the ED proved his allegations, recommends that the penalty of \$3,950 be assessed.

I. BACKGROUND AND PROCEDURAL HISTORY

Bruce's owns and operates an equipment rental and leasing business, along with a mulching and composting operation, at 101 Gum Slough Road in Jasper County, Texas. At the time of the alleged unauthorized discharge, a large amount of wood chips (resulting from Hurricane Rita cleanup operations) was stockpiled at the site of the Bruce's facility. Because the wood chips tended to combust, Bruce's maintained a fire water pond adjacent to the stockpile. In November 2006, several days following heavy rains, a fish kill was reported in a pond to the northeast of the stockpile and fire water pond. The ED alleges that leachate from the wood chip stockpile, co-mingled with water from the fire water pond, caused the fish kill. At the time of the incident, Bruce's had no permit issued by the Commission to discharge waste into or adjacent to any water in the state.

On July 23, 2007, the Executive Director filed a preliminary report and petition (EDPRP), in accordance with Tex. Water Code § 7.054, alleging that Respondent had violated § 26.121(a) of the Texas Water Code. The EDPRP requested a \$5,200 administrative penalty.¹ On July 27, 2007, Bruce's filed an Answer, requesting a hearing. On August 27, 2007, the Commission referred this case to the State Office of Administrative Hearings (SOAH). The parties both appeared at the preliminary hearing on October 4, 2007.

The hearing on the merits convened on January 31, 2008, before ALJ Shannon Kilgore at SOAH's hearing facility in Austin, Texas. The ED was represented by Barham Richard, and Respondent was represented by Ben Bruce, who is Vice-President of Bruce's. The hearing adjourned the same day. The record closed with Respondent's post-hearing submission of a photograph (Respondent Exhibit 2) on February 5, 2008.²

II. LEGAL STANDARDS

Unauthorized discharges. Section 26.121(a) of the Texas Water Code provides in relevant part:

Except as authorized by the commission, no person may:

- (1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state.

"To discharge" is defined under the statute as including to "deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of

¹ As discussed below, the ED has lowered his recommended penalty amount.

² The photo had been admitted at hearing, but the ALJ did not have a copy in the record.

these acts or omissions.”³ “Industrial waste” is defined as “waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.”⁴ “Water” or “water in the state” means:

groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.⁵

Texas Surface Water Quality Standards. Chapter 307 of the Commission’s rules establish the Texas Surface Water Quality Standards.⁶ The rules identify stream segments in the state and provide certain water quality criteria for each identified stream segment. It is the policy of the Commission that these stream standards should be maintained by all reasonable means.⁷ Persons or businesses do not “violate” the stream standards, but they sometimes discharge pollutants in violation of their permits or applicable law in such a way as to cause the water quality criteria not to be met.

According to evidence in the record, the fish kill pond and the Bruce’s facility are located on segment 0602 – “Neches River Below B.A. Steinhagen Lake.”⁸ The parameters established in chapter 307 for this segment are as follows:⁹

³ TEX. WATER CODE § 26.001(20).

⁴ TEX. WATER CODE § 26.001(11).

⁵ TEX. WATER CODE § 26.001(5).

⁶ 30 TEX. ADMIN. CODE ch 307.

⁷ 30 TEX. ADMIN. CODE § 307.1.

⁸ ED Exhibit 7. Mr. Scott Griffith of the Commission testified that Segment 0602 is where the events in question occurred.

Chlorine	50 milligrams/liter (mg/l)
Sulfides	50 mg/l
Total dissolved solids (TSS)	200 mg/l
Dissolved oxygen (DO)	5.0 mg/l (24-hour average) ¹⁰
pH range	6.0-8.5 s.u.
Indicator bacteria	126/200 (#/100ml)
Temperature	91

Administrative penalty. The Commission is authorized to assess an administrative penalty against a person who violates a statute within the Commission's jurisdiction.¹¹ The penalty in this case may not exceed \$10,000 per day of violation.¹²

In determining the amount of an administrative penalty, § 7.053 of the Texas Water Code requires the Commission to consider several factors, including:

- The nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;
- the impact of the violation on a receiving stream; the instream uses, water quality, aquatic and wildlife habitat or beneficial freshwater inflows to bays or estuaries;
- the history and extent of previous violations by the violator;

⁹ ED Exhibit 8. The standards for this stream segment are supported by water quality data, going back to the 1970s, from a sampling station in the vicinity. Some of the data from that station for the past few years is at ED Exhibit 16.

¹⁰ Segment 0602 is designated as a "high" aquatic life use segment. ED Exhibit 8. For such segments, the dissolved oxygen criteria are 5.0 mg/l for a 24-hour average and 3.0 mg/l for an individual sample. ED Exhibit 9.

¹¹ TEX. WATER CODE § 7.051.

¹² TEX. WATER CODE § 7.052.

- the violator's degree of culpability, good faith efforts to comply, and economic benefit gained through the violation;
- the amount necessary to deter future violations; and
- any other factors that justice may require.

The Commission has adopted a Penalty Policy (the Policy) setting forth its method for the computation and assessment of administrative penalties.

III. DISCUSSION

The ED maintains that the evidence shows the fish kill was traceable to Bruce's facility. Bruce's contends that the link between the fish kill and its facility was not proven.

A. Evidence

The ED called two witnesses: Merrilee Hupp and Scott Griffith. Mr. Bruce testified on behalf of Respondent. The ED offered a number of exhibits in support of its case, and Bruce's offered one photograph.

Merrilee Hupp. Ms. Hupp is employed by the TCEQ as an enforcement coordinator. She testified about the calculation of the recommended administrative penalty. According to Ms. Hupp, she prepared the penalty calculation worksheet (PCW).¹³

Ms. Hupp explained that the maximum penalty available for this violation under the statute is \$10,000. Because there was actual harm to the environment as a result of the discharge – *i.e.*,

¹³ The original PCW is at ED Exhibit 11. The penalty policy in effect when the alleged violation occurred is at ED Exhibit 10.

the fish kill – the violation was deemed “major/actual.” She testified that according to the penalty policy, if the violation is a major/actual but the entity is a minor source like Bruce’s, the penalty before adjustments is \$5,000. Then, because Bruce’s had a compliance history consisting of having been sent two notices of violation in the past,¹⁴ there was an upward adjustment of 4%, or \$200, bringing the recommended amount in the PCW to \$5,200. This is the amount reflected in the EDPRP.

Ms. Hupp went on to explain that, because Bruce’s had done some prompt levee work to address TCEQ’s concerns, a 25% reduction for good faith effort was appropriate. This reduction brought the ED’s recommended penalty amount to \$3,950.¹⁵

Scott Griffith. Mr. Griffith has been an investigator with TCEQ (or its predecessor agencies) for 15 years. He holds bachelor’s and master’s degrees in biology. He works in TCEQ’s Beaumont regional office and has undertaken scores of investigations of discharges, including eight fish kills.

Mr. Griffith testified that TCEQ received a complaint on November 7, 2006, that there had been a fish kill. On that same day, Mr. Griffith (accompanied by TCEQ investigator Tong Huynh) went into the field to conduct his investigation.¹⁶

The investigators first went to the fish kill pond and met with the owner. The pond had a strong odor of sour effluent, like that of decayed wood. Mr. Griffith stated the pond was very dark

¹⁴ ED Exhibit 12.

¹⁵ $\$5,000 + (\$5,000 \times 4\%) - (\$5,000 \times 25\%) = \$3,950$. An amended PCW including the good faith effort reduction is at ED Exhibit 11.

¹⁶ Mr. Griffith’s report is at ED 14. Although the report seems to suggest that the investigation was done later in November, it was in fact carried out on November 7, 2006. Maps of the area are at ED 1, 2. A satellite photo is at ED 3. A diagrammatic map, prepared by Mr. Griffith, is at ED 4. Photos taken as Mr. Griffith carried out his investigation are at ED 15.

and had foam on its banks, and there were numerous dead fish. At the inlet to the pond, the water was foaming and bubbling, indicating some biological action perhaps involving organic material in the water.

According to Mr. Griffith's report, approximately 1,030 dead fish were found in the pond. They were highly decayed and appeared to have been dead for four to 10 days. The report also notes that there had been a rain event about seven to 10 days before the day of the investigation. Residents stated that the fish kill had started after the rainfall.

Mr. Griffith explained that during the investigation, and starting at the fish kill pond, he and his co-investigator took field measurements, which were *in situ* measurements of such parameters as DO, pH, conductivity, and temperature. These measurements were done with equipment calibrated before and after the investigation, and were recorded in the field notes.¹⁷ The investigators also took water samples that were later sent to a laboratory for analysis of various parameters, including BOD, TSS, chemical oxygen demand (COD), ammonia nitrogen, and phosphorus.¹⁸

From a dock that extended out into the center of the fish kill pond, the investigators took their first samples. According to Mr. Griffith, the quality of the water was such that fish life was not sustainable. The DO, which should have been upwards of 3.0 mg/l, was only 0.2 or 0.3 mg/l. The pH was also low – about 5.2 s.u., as opposed to the expected 6.0 - 8.5 s.u. And, according to Mr. Griffith, conductivity was very high. Mr. Griffith testified that the combination of extremely low DO, low pH, and high conductivity was so distinctive that the source of the problem would be readily traceable.

¹⁷ ED Exhibit 14, Attachment B, document entitled "Field Measurements Summary."

¹⁸ ED Exhibit 14, Attachment B, document entitled "Sample Analysis Summary."

At the inlet to the fish kill pond, the water quality had similar characteristics – low DO, low pH, and high conductivity. Mr. Griffith stated that from there, he followed the stream through the woods. There were no point sources and no tributaries entering the stream. He followed the flow until he reached what he described as a “fire line break.”¹⁹ After that, the vegetation was dense, so he returned to the fish kill pond, loaded up his equipment, and drove to try to approach the stream from the other direction.

Mr. Griffith drove along a railroad track to try to pick up the stream on the other side of the area of dense vegetation. The railroad track runs along the back of the Bruce’s facility. Mr. Griffith found the stream and followed it back toward the fish kill pond, walking all the way to fire line break (or logging road), then beyond. It was the same stream he had followed from the fish kill pond earlier in the other direction, and now he had walked the entire length of the stream between the fish kill pond and the railroad tracks. Again, he noted that there were no other point sources or tributaries along the stream.

Field measurements taken where the stream intersected with the railroad tracks indicated DO of 0.2 mg/l, pH of 5.0 s.u., and extremely high conductivity – the same characteristics as found in the water entering the fish kill pond and in the middle of the pond. Then, samples taken just further upstream, now on the Bruce’s property, again yielded very similar results. The conductivity was getting even higher, indicating worsening water quality. According to Mr. Griffith, this suggested that he was getting closer to the source of the pollution.

Mr. Griffith’s report indicates that Bruce’s contracts to receive bark and other materials from lumber and paper industries, and has a mulching/composting operation that covers about 15 acres. In 2006, part of that operation consisted of an 8-acre hurricane storm debris pile with four-inch wood chips intended as fuel stock. Storm water and leachate from the hurricane debris pile were collected in the adjacent fire water pond created because of spontaneous fires in the hurricane

¹⁹ Mr. Bruce later described it as a logging road.

debris. The hurricane debris was provided to Bruce's by the United States Army Corps of Engineers (Corps), which, in cooperation with the Federal Emergency Management Administration, undertook to handle the woody debris created as a result of cleanup from Hurricane Rita. Bruce's received the material from the Corps, stockpiled it, and sold it as boiler fuel to a nearby paper mill.²⁰

More field measurements from the drainage system on the property of Bruce's showed further worsening water quality. Further measurements at the Bruce's site yielded highly variable results. Measurements taken at some locations on the site had much more normal results, with lower conductivity, and DO and pH within the parameters of the chapter 370 criteria, while measurements at other locations indicated extremely low DO and pH and extremely high conductivity. The worst results overall were for water taken from a fire water pond on the Bruce's site, which was dark and bubbling and had a strong odor like paper mill effluent. Mr. Griffith further testified that water samples taken and sent to a laboratory for analysis had very high BOD, TOC, and TDS values that increased with proximity to the fire water pond.

By using all these water quality indicators to trace the flow of contamination, Mr. Griffith became convinced that the source of the pollution that caused the fish kill was the fire water pond on the Bruce's site.²¹ He stated that there is no doubt in his mind that the cause of the fish kill was a discharge from the fire water pond.

²⁰ A representative of Bruce's signed an agreement with the Corps that includes the following language:

The undersigned . . . agrees and warrants that they will hold harmless the United States, the U.S. Army Corps of Engineers, its contractors and/or subcontractors, from any damage of any type whatsoever, either to the above-described property or person of [sic] situated thereon, and hereby releases, discharges, waives any and all actions, legal or equitable, which the undersigned has or ever might have by any action of the United States, the U.S. Army Corps of Engineers, its contractors and/or subcontractors.

ED Exhibit 14.

²¹ According to Mr. Bruce, it is about 0.5 mile from the fire water pond to the fish kill pond.

Mr. Griffith noted that there is a paper mill nearby.²² However, the paper mill discharges into a canal system to the southwest, away from Bruce's. Further, stated Mr. Griffith, the topographical map indicates that Bruce's is higher than the paper mill.²³

On cross-examination, Mr. Griffith acknowledged that there may be ditches on the sides of the logging road, but he stated there was no channelized flow in them. He agreed that there had been flooding conditions about 2 weeks prior to the fish kill. He acknowledged that while the site of the paper mill is lower than Bruce's, the ponds at the paper mill are elevated. However, he stated the paper mill ponds are required to maintain at least 2 feet of freeboard and no discharges were reported from the paper mill. He testified that he is sure that the decaying fish could not have caused the field measurement and water sample results. He acknowledged that the only dead fish were in the fish kill pond and not along the stream (but he also stated he saw no live fish in the stream, either, and in any event dead fish in the stream could have been washed into the pond).

Mr. Griffith also agreed that there is a levee around the fire water pond that must have been breached for the fire water pond to discharge into the stream. When asked how there could be a pond, just 200 feet from the fire water pond, with live fish in it at the time of the fish kill at issue in this case, Mr. Griffith stated that the other pond was not in the discharge route from the fire water pond.

Ben Bruce. Mr. Bruce testified that there was a pond only 200 feet away from the fire water pond that had live fish in it even when the fish kill in question occurred. He further stressed that no dead fish were found between the fire water pond and the fish kill pond, suggesting to him that the stream was not the route of the contamination. He said that at the time of the TCEQ's

²² If the distance between the fire water pond and the fish kill pond is about 0.5 mile, the paper mill appears to be approximately 1.25 miles away from the Bruce's site, and about 1.75 miles away from the fish kill pond. ED Exhibit 1.

²³ See ED Exhibit 1.

investigation, he asked them to look at the nearby pond with fish, but they did not do so; Mr. Bruce believes they were under time constraints. Mr. Bruce feels strongly that the ED's case is based on speculation, rather than facts, about the source of the fish kill.

B. Analysis

The ED has proven its case by a preponderance of the evidence. Mr. Griffith's testimony, supported by the field measurements and sample analysis results, persuasively established that the fire water pond was the source of the contamination. Mr. Griffith's tracing of water with unusual, distinctive characteristics – extremely low DO, low pH, and high conductivity – in a path of flow from the fish kill pond to the fire water pond is very convincing evidence. It is Mr. Bruce's assertion that the paper mill was the likely source of the pollution that is highly speculative; the paper mill is farther away from the fish kill pond and the mill's ponds are required to have adequate freeboard to prevent discharges.

Mr. Bruce is clearly a conscientious business manager who had no intention of committing an environmental violation, and his company seems to have relied to some degree on assurances from the Corps that there would be no problems associated with stockpiling the hurricane debris. Further, Bruce's responded quickly to TCEQ's concerns by taking steps to ensure containment of the fire water pond.

The ALJ concludes that the penalty amount of \$3,950 sought by the ED, which reflects the identifiable environmental harm in this case but also accounts for Bruce's good faith response, is an appropriate sanction under the circumstances.

IV. CONCLUSION

The ED has proven by a preponderance of the evidence that a discharge from Bruce's caused the fish kill and that the proposed penalty was properly calculated under the Commission's Penalty Policy. The ALJ recommends that the Commission assess a penalty of \$3,950 against Bruce's. A draft order incorporating this recommendation is attached to this Proposal for Decision.

SIGNED March 20, 2008.

**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



ORDER
Assessing Administrative Penalties Against
BRUCE'S, INC.
SOAH DOCKET NO. 582-08-0036
TCEQ DOCKET NO. 2007-0119-WQ-E

On _____, the Texas Commission on Environmental Quality (TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against Bruce's, Inc. A Proposal for Decision (PFD) was presented by Shannon Kilgore, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing in this case on January 31, 2008, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Bruce's, Inc., (Bruce's) owns and operates an equipment rental and leasing business, along with a mulching and composting operation, at 101 Gum Slough Road in Jasper County, Texas.
2. Bruce's contracts to receive bark and other materials from lumber and paper industries, and has a mulching/composting operation that covers about 15 acres.
3. In 2006, Bruce's mulching/composting operation included an approximately 8-acre hurricane storm debris pile consisting of four-inch wood chips.
4. The hurricane debris had been provided to Bruce's by the United States Army Corps of Engineers (Corps), which, in cooperation with the Federal Emergency Management Administration, undertook to handle the woody debris created as a result of cleanup from Hurricane Rita. Bruce's received the material from the Corps, stockpiled it, and sold it as boiler fuel to a nearby paper mill.
5. Storm water and leachate from the hurricane debris pile were collected in the adjacent fire water pond, created because of spontaneous fires in the hurricane debris.
6. On November 7, 2006, TCEQ received a complaint that there had been a fish kill. On that same day, TCEQ investigators went into the field to conduct an investigation.
7. The investigators found approximately 1,030 dead fish in the pond, which was very dark and foamy, and had strong odor of sour effluent, like that of decayed wood. At the inlet to the pond, the water was foaming and bubbling.
8. The dead fish were highly decayed and appeared to have been dead for four to 10 days.

9. There had been a rain event about seven to 10 days before the day of the investigation.
10. Residents stated that the fish kill had started after the rainfall.
11. The TCEQ investigators began at the inlet of the fish kill pond and followed the stream to the Bruce's facility.
12. Field measurements and water quality sampling at the fish kill pond and its inlet revealed that the water was characterized by extremely low dissolved oxygen, low pH, and high conductivity.
13. The TCEQ investigators found water with extremely low dissolved oxygen, low pH, and high conductivity in a path of flow leading to the fire water pond at the Bruce's site, which was dark and bubbling and had a strong odor like paper mill effluent.
14. The source of the pollution that caused the fish kill was a discharge from the fire water pond on the Bruce's site into or adjacent to the stream that led to the fish kill pond.
15. Bruce's had no permit issued by the Commission to discharge waste into or adjacent to any water in the state.
16. Bruce's did some prompt levee work to address TCEQ's concerns as a result of the fish kill.
17. Bruce's had a compliance history consisting of having been sent two notices of violation in the past.
18. On July 23, 2007, the Executive Director filed a preliminary report and petition (EDPRP), in accordance with TEX. WATER CODE (Water Code) § 7.054, alleging that Respondent had violated Water Code § 26.121(a).
19. On July 27, 2007, Bruce's filed an Answer, requesting a hearing.
20. On August 27, 2007, the Commission referred this case to SOAH.

21. On September 13, 2007, the Chief Clerk mailed notice of the scheduled preliminary hearing to Bruce's. The notice of hearing:
 - a. Indicated the time, date, place, and nature of the hearing;
 - b. Stated the legal authority and jurisdiction for the hearing;
 - c. Indicated the statutes and rules the ED alleged the Respondent violated;
 - d. Referred to the EDPRP, a copy of which was attached, which indicated the matters asserted by the ED; and
 - e. Included a copy of the ED's penalty calculation worksheet, which showed how the penalty was calculated for the alleged violations.
22. The ED and Bruce's appeared at the preliminary hearing on October 4, 2007, and were named as parties.
23. The hearing on the merits convened on January 31, 2008, before administrative law judge Shannon Kilgore at SOAH's hearing facility in Austin, Texas. The hearing adjourned the same day.

CONCLUSIONS OF LAW

1. Under Water Code 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Water Code.
2. Under Water Code 7.052, a penalty may not exceed \$10,000 per violation per day for each violation at issue in this case.

3. As required by Water Code 7.055 and 30 TEX. ADMIN. CODE 1.11 and 70.104, Bruce's was notified of the EDPRP and of the opportunity to request a hearing on the violations alleged and the penalties proposed therein.
4. As required by TEX. GOV'T CODE (Gov't Code) 2001.052; Water Code 7.058; 1 TEX. ADMIN. CODE 155.27; and 30 TEX. ADMIN. CODE 1.11, 1.12, 39.25, and 80.6, Bruce's was notified of the hearing.
5. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Gov't Code ch. 2003.
6. The water in the Bruce's fire water pond, consisting of storm water and leachate from the hurricane debris pile, was "industrial waste" within the meaning of Water Code § 26.001(11).
7. Bruce's committed an unauthorized discharge of industrial waste into or adjacent to water in the state in violation of Water Code § 26.121(a).
8. In determining the amount of an administrative penalty, Water Code 7.053 requires the Commission to consider several factors including:
 - Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and

- Any other matters that justice may require.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
 11. Based on the above Findings of Fact, the factors set out in Water Code ' 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalty and a total administrative penalty of \$3,950 is justified and should be assessed against Bruce's.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Within 30 days after the effective date of this Order, Bruce's shall pay an administrative penalty in the amount of \$3,950 for the violation of Water Code § 26.121(a), with the notation "BRUCE'S, INC., TCEQ DOCKET NO. 2007-0119-WQ-E" to:

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

2. The payment of the administrative penalty will completely resolve the violation set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.

3. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Bruce's if the ED determines that Bruce's has not complied with one or more of the terms or conditions in this Order.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE 80.273 and Gov't Code 2001.144.
6. The Commission's Chief Clerk shall forward a copy of this Order to Bruce's.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

**TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY**

**BUDDY GARCIA, CHAIRMAN
FOR THE COMMISSION**