

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

July 29, 2008

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

2008 JUL 29 PM 4:02  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: SOAH Docket No. 582-08-1316; TCEQ Docket No. 2007-0795-MLM-E; In Re:  
Liberty Waste Systems, Inc.

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than August 18, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than August 28, 2008.

This matter has been designated **TCEQ Docket No. 2007-0795-MLM-E; SOAH Docket No. 582-08-1316**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Cloninger".

Sharon Cloninger  
Administrative Law Judge

SC/lh  
Enclosures  
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: LIBERTY WASTE SYSTEMS, INC

SOAH DOCKET NUMBER: 582-08-1316

REFERRING AGENCY CASE: 2007-0795-MLM-E

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STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE  
ALJ SHARON CLONINGER

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REPRESENTATIVE / ADDRESS

PARTIES

BLAS J. COY, JR.  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF PUBLIC INTEREST COUNSEL  
P.O. BOX 13087, MC-103  
AUSTIN, TX 78711-3087  
(512) 239-6363 (PH)  
(512) 239-6377 (FAX)

OFFICE OF PUBLIC INTEREST COUNSEL

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TCEQ CHIEF CLERK  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
MC-173 P.O. BOX 13087  
AUSTIN, TX 78711-3087

(512) 239-3311 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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LES TROBMAN  
GENERAL COUNSEL  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
MC-175 P.O. BOX 13087  
AUSTIN, TX 78711-3087

(512) 239-5533 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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BARHAM RICHARD  
STAFF ATTORNEY  
TCEQ  
LITIGATION DIVISION  
P O BOX 13087  
AUSTIN, TX 78711  
(512) 239-0107 (PH)  
(512) 239-3434 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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JAMES L. WATTS  
REGISTERED AGENT  
LIBERTY WASTE SYSTEMS, INC.  
525 17TH STREET  
ROCK ISLAND, IL 61204-5410

LIBERTY WASTE SYSTEMS, INC.

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xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-08-1316  
TCEQ DOCKET NO. 2007-0795-MLM-E**

<b>EXECUTIVE DIRECTOR</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>OF THE TEXAS COMMISSION ON</b>	§	
<b>ENVIRONMENTAL QUALITY,</b>	§	
<b>    Petitioner</b>	§	
	§	<b>OF</b>
<b>v.</b>	§	
	§	
<b>LIBERTY WASTE SYSTEMS, INC.,</b>	§	
<b>    Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess \$4,400 in administrative penalties against and require certain corrective actions by Liberty Waste Systems, Inc. (Respondent) for numerous violations of the Commission's rules contained in Title 30 of the Texas Administrative Code. Specifically, the ED alleges that Respondent has violated the state's municipal solid waste and industrial hazardous waste programs.

After being properly notified, Respondent failed to appear at the hearing on the merits concerning the ED's allegations and recommendation. Therefore, as set out below, the Administrative Law Judge (ALJ) recommends that the Commission enter a default order against Respondent, deem as true the facts alleged by the ED, and assess a penalty of \$2,200 against and require certain corrective actions by Respondent. Although the ED requested a \$4,400 penalty, the evidence only supports a \$2,200 penalty.<sup>1</sup>

**II. JURISDICTION AND VIOLATIONS**

Respondent owns and operates a used oil handler, used oil filter handler, industrial hazardous waste transporter, and tire generator operation located at 6400 N. Main St., Baytown, Harris County,

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<sup>1</sup> The EDPRP, under Item 11, references Attachment A and B as penalty calculation worksheets, but only Attachment A was attached and admitted into evidence. Attachment A calculates a penalty of \$2,200.

Texas (the Operation). The Operation involves the management and disposal of Municipal Solid Waste and Industrial Hazardous Waste as defined in TEX. HEALTH & SAFETY CODE ANN. chapters 361 and 371. During investigations conducted on July 10, 2006, and January 2, 2007, a TCEQ Houston Regional Office investigator documented that Respondent violated the following requirements:

- a. 30 TEX. ADMIN CODE § 324.4(1) and 40 CFR § 279.22(d) by failing to prevent the release of used oil to the ground;
- b. 30 TEX. ADMIN. CODE § 324.6 and 40 CFR § 279.22(c)(1) by failing to label containers and tanks storing oil with the words "Used Oil";
- c. 30 TEX. ADMIN CODE § 328.25(c) by failing to provide copies of bills of lading for shipments of used oil filters; and
- d. 30 TEX. ADMIN. CODE § 330.15(c) by failing to prevent the disposal of municipal solid waste at an unauthorized facility.

During a record review conducted on April 2, 2007, a TCEQ Houston Regional office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 335.6(c) by failing to update the Notice of Registration.

Under TEX. WATER CODE ANN. § 7.051, the Commission is authorized to assess an administrative penalty against a person who violates a provision of the Texas Water Code within the Commission's jurisdiction or a rule adopted or an order or permit issued there under. As pertinent to this case, the penalty may not exceed \$10,000 per day of violation.<sup>2</sup> Additionally, the Commission may order the violator to take corrective action.<sup>3</sup>

In this case, Respondent is alleged to have violated various provisions under Title 30 of the Texas Administrative Code, which contains rules adopted within the Commission's authority.

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<sup>2</sup> TEX. WATER CODE ANN. § 7.052(c).

<sup>3</sup> TEX. WATER CODE ANN. § 7.073.

Further, Respondent is alleged to have violated the Code of Federal Regulations. Each of these are bases for the imposition of administrative penalties or corrective action under TEX. WATER CODE ANN. §§ 7.051 and 7.073. Thus, the Commission has jurisdiction over Respondent and authority to assess penalties and order the corrective action requested by the ED. Further, the State Office of Administrative Hearings (SOAH) has jurisdiction over this matter as reflected in the Conclusions of Law that are in the attached Default Order.

### III. DEFAULT

A default in this case is entered pursuant to 1 TEX. ADMIN. CODE §155.55. That rule specifies that any default entered under the rule shall be issued only upon adequate proof that proper notice has been provided to the defaulting party. As set forth in the Findings of Fact and Conclusions of Law, the ALJ finds that the requisite notice was provided to Respondent in accordance with TEX. GOV'T CODE ANN. § 2001.052, 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and 30 TEX. ADMIN. CODE §§ 1.11 and 39.25.

Therefore, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law set forth in the attached Default Order, assessing an administrative penalty of \$2,200 against Respondent for the violations in issue and directing Respondent to take the specified corrective actions.

**SIGNED July 29, 2008.**

  
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SHARON CLONINGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**DEFAULT ORDER** Assessing Administrative Penalties Against  
and Ordering Corrective Action by Liberty Waste Systems, Inc.,  
TCEQ Docket No. 2007-0795-MLM-E; SOAH Docket No. 582-08-1316

On \_\_\_\_\_, 2008, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Liberty Waste Systems, Inc. (Respondent). A Proposal for Decision (PFD) was presented by Sharon Cloninger, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public hearing concerning the EDPRP on July 24, 2008, in Austin, Texas.

The Executive Director, represented by Barham A. Richard, appeared at the hearing. The Respondent was not present at the hearing nor represented by counsel and did not file for a continuance. The Executive Director requested that a default be entered against the Respondent. The ALJ agreed with the Executive Director's request.

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

## I. FINDINGS OF FACT

1. Respondent owns and operates a used oil handler, used oil filter handler, industrial hazardous waste transporter, and tire generator operation located at 6400 N. Main St., Baytown, Harris County, Texas (the Operation). The Operation involves the management and disposal of Municipal Solid Waste and Industrial Hazardous Waste as defined in TEX. HEALTH & SAFETY CODE ANN. chapters 361 and 371.
2. During investigations conducted on July 10, 2006, and January 2, 2007, and a record review conducted April 2, 2007, a TCEQ Houston Regional Office investigator documented that Respondent violated the following requirements:
  - a. 30 TEX. ADMIN CODE § 324.4(1) and 40 CFR § 279.22(d) by failing to prevent the release of used oil to the ground;
  - b. 30 TEX. ADMIN. CODE § 324.6 and 40 CFR § 279.22(c)(1) by failing to label containers and tanks storing oil with the words "Used Oil";
  - c. 30 TEX. ADMIN CODE § 328.25(c) by failing to provide copies of bills of lading for shipments of used oil filters; and
  - d. 30 TEX. ADMIN. CODE § 330.15(c) by failing to prevent the disposal of municipal solid waste at an unauthorized facility.
3. During a record review conducted on April 2, 2007, a TCEQ Houston Regional office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 335.6(c) by failing to update the Notice of Registration.
4. Respondent received notice of the violations on or about August 11, 2007.

5. On September 10, 2007, the Executive Director filed the EDPRP, in accordance with TEX. WATER CODE ANN. § 7.054, alleging that Respondent had violated 30 TEX. ADMIN. CODE §§ 324.4(1), 324.6, 328.25(c), 330.15(c), and 335.6(c), and 40 CFR § 279.22(c)(1) and (d).
6. In the EDPRP, the Executive Director alleged that Respondent failed to update the Notice of Registration, as documented in the records review conducted on April 2, 2007. Specifically, Respondent did not complete and submit the form entitled “Changes to Notice of Registration,” which was left with the Operation on January 4, 2007. Also, revisions related to operator information and owner phone number had not been made. The aforementioned actions are in violation of 30 TEX. ADMIN. CODE § 335.6(c).
7. For the violation alleged in the previous finding, the Executive Director seeks a penalty of \$1,000 on the basis that there was just one quarterly violation of this nature, the violation was a major potential violation, and the Respondent received an estimated economic benefit of \$ 4 from the violation.
8. In the EDPRP, the Executive Director alleged that Respondent failed to prevent the disposal of municipal solid waste at an unauthorized facility, as documented during investigations conducted on July 10, 2006, and January 4, 2007, and a records review conducted on April 2, 2007. Specifically, Respondent allowed three roll-off boxes — two containing scrap tires and one containing trash and construction debris (generated by Respondent) — to be disposed of at the unauthorized facility, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
9. For the violation alleged in the previous finding, the Executive Director seeks a penalty of \$1,000 on the basis that there was just a single violation of this nature, the violation was a minor environmental property and human health violation, and Respondent received an

estimated economic benefit of \$ 377 from the violation.

10. In the EDPRP, the Executive Director alleged that Respondent has received two notices of violation with the same or similar violations for this site in the past five years, and recommends a 10 percent enhancement of the two \$1,000 penalties for non-compliance, bringing each penalty to \$1,100 and the total penalty amount to \$2,200.
11. The Executive Director mailed a copy of the EDPRP to Respondent's last address known to the TCEQ on the same date that the EDPRP was filed.
12. Respondent received the EDPRP.
13. On November 26, 2007, Respondent filed a response to the EDPRP, and the matter was referred to SOAH for hearing.
14. On January 15, 2008, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Respondent.
15. 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 Executive Director alleged Respondent violated;
  - (d) Referred to the EDPRP, a copy of which was attached, which contained the matters asserted by the Executive Director;
  - (e) Advised Respondent, in at least 12-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and EDPRP being

deemed as true and the relief sought in the notice possibly being granted by default;  
and

- (f) Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
16. The Executive Director and Respondent waived appearance at the February 14, 2008 preliminary hearing, and submitted an agreed procedural schedule that was adopted.
17. On July 24, 2008, the ALJ convened the hearing on the merits. Respondent did not appear, nor did a representative of Respondent appear.
18. Based on Respondent's failure to appear at the hearing, the Executive Director moved for a default against Respondent in which all of the Executive Director's allegations would be deemed admitted as true, the penalties the Executive Director seeks would be assessed against Respondent, and Respondent would be ordered to take the corrective action recommended by the Executive Director. The ALJ granted the motion.

## II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Water Code or of the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued there under.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000 per violation, per day for the violations alleged in this proceeding.
3. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.

4. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.
5. As required by TEX. GOV'T CODE ANN. § 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties. Additionally, Respondent was notified, in accordance with 1 TEX. ADMIN. CODE § 155.55, that if Respondent failed to appear at the hearing, a default could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true.
6. 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 TEX. GOV'T CODE ANN. ch. 2003.
7. Based on the above Findings of Fact and Conclusions of Law:
  - (a) A default should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE § 70.160(b); and
  - (b) the allegations contained in the notice of the hearing, including those in the EDPRP attached thereto, are deemed admitted as true.
8. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE §§ 324.4(1), 324.6, 328.25(c), 330.15(c), and 335.6(c), and 40 CFR §§ 279.22(c)(1) and 279.22(d). In determining the amount of an administrative penalty,

TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:

- (a) 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;
- (b) The impact of the violation on:
  - i. air quality in the region;
  - ii. a receiving stream or underground water reservoir;
  - iii. instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or
  - iv. affected persons;
- (c) with respect to the alleged violator:
  - i. the history and extent of the previous violations;
  - ii. the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated or avoided;
  - iii. the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
  - iv. economic benefit gained through the violation; and
  - v. the amount necessary to deter future violations; and
- (d) any other matters which justice may require.

9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director properly calculated the penalties for two of the alleged violations, but did not provide a penalty calculation worksheet for the remaining alleged violations, and a total administrative penalty of \$2,200 is justified and should be assessed against Respondent.
11. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

**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 Commission Order, Liberty Waste Systems, Inc. (Respondent) shall pay an administrative penalty in the amount of \$2,200 for violation of 30 TEX. ADMIN. CODE §§ 330.15(c) and 335.6(c), and 40 CFR §§ 279.22(c)(1) and 279.22(d).  
Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ."  
Administrative penalty payments shall be sent with the notation "Re: Liberty Waste Systems, Inc.; TCEQ Docket No. 2007-0795-MLM-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. Within 30 days after the effective date of the Commission Order, Respondent shall:

- (a) Submit an Affected Property Assessment Report, as required by 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program (TRRP) found in 30 TEX. ADMIN CODE ch. 350 which may include, but are not limited to, the following:
- i. Remedy Standard selection and submittal of either a Self-Implementation Notice (SIN), pursuant to 30 TEX. ADMIN. CODE § 350.92, or a Response Action Plan (RAP), pursuant to 30 TEX. ADMIN. CODE § 350.94;
  - ii. Financial assurance documentation (30 TEX. ADMIN. CODE § 350.33(l));
  - iii. A Response Action Effectiveness Report (30 Tex. Admin. Code § 350.93), submitted within 365 days after SIN submittal or RAP approval, unless a Response Action Completion Report has previously been approved;
  - iv. An Alternative Response Action, under 30 Tex. Admin. Code § 350.31(e) and § 350.32(b)(3) or § 350.33(b)(2), submitted within 30 days after written notification by the Executive Director that sufficient progress is not being made toward timely achievement of any response objective;
  - v. A Response Action Completion Report (RACR), pursuant to 30 Tex. Admin. Code § 350.95, submitted within 90 days after completing the response action;
  - vi. Institutional control documentation, under 30 Tex. Admin. Code § 350.31(g), submitted within either 90 days after RACR approval or 120 days after RAP approval;
  - vii. Post-Response Action Care Reports (30 Tex. Admin. Code § 350.96)

submitted for Remedy Standard B until termination of the post-response action period.

- (b) Label all used oil tanks with the words "Used Oil";
  - (c) Implement procedures to ensure that copies of the bills of lading are available for TCEQ personnel to inspect at any reasonable time;
  - (d) Obtain and submit copies of the July/August 2006 trip tickets from Approved Remediation & Recycling Oil Waste, Inc.;
  - (e) Update the Notice of Registration to include the correct operator information as well as the correct phone number for Respondent's facility; and
  - (f) Properly dispose of the three roll-off boxes at authorized facilities.
3. Within 45 days after the effective date of the Commission Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2(a) through 2(f).

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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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 copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, TX 77023-1452

4. 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 Commission Order.
5. 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.
6. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN.

CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

7. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. 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

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Buddy Garcia, Chairman  
For the Commission