

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 16, 2010

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

Re: SOAH Docket No. 582-10-3327; TCEQ Docket No. 2009-1347-MLM-E; In Re:
The Matter of an Enforcement Action Against Clarence Nolan; RN105764757

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 documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than August 5, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than August 16, 2010.

This matter has been designated **TCEQ Docket No. 2009-1347-MLM-E ; SOAH Docket No. 582-10-3327**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Hunter Burkhalter".

Hunter Burkhalter
Administrative Law Judge

HB/slc
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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Austin, Texas 78701

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: CLARENCE NOLAN

SOAH DOCKET NUMBER: 582-10-3327

REFERRING AGENCY CASE: 2009-1347-MLM-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ HUNTER BURKHALTER**

REPRESENTATIVE / ADDRESS

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TCEQ EXECUTIVE DIRECTOR

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CLARENCE L. NOLAN

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-10-3327
TCEQ DOCKET NO. 2009-1347-MLM-E

**IN THE MATTER OF AN
ENFORCEMENT ACTION
AGAINST
CLARENCE NOLAN;
RN105764757**

§
§
§
§
§

**BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess \$10,758 in administrative penalties against, and require certain corrective actions by, Clarence Nolan (Mr. Nolan) for violations of TEX. HEALTH & SAFETY CODE § 382.085(b), and 30 TEX. ADMIN. CODE §§ 111.201, and 330.15(c). The ED alleges that Mr. Nolan has operated an unauthorized solid waste disposal site and engaged in unauthorized outdoor burning on land he owns in Bastrop County, Texas. As set out below, the Administrative Law Judge (ALJ) finds that Mr. Nolan committed the alleged violations and recommends that the Commission assess a penalty of \$10,758 against, and require certain corrective actions by, Mr. Nolan.

II. JURISDICTION

Mr. Nolan does not dispute the Commission's jurisdiction, so no further discussion regarding notice or jurisdiction is included here. The attached Proposed Order contains the required Findings of Fact and Conclusions of Law.

III. PROCEDURAL HISTORY

A hearing was held in this matter on July 2, 2010. The ED was represented by Phillip M. Goodwin, staff attorney. Mr. Nolan appeared *pro se*. The record closed the same day.

IV. APPLICABLE LAW

The ED alleges that Mr. Nolan violated the Texas Health & Safety Code and two of the Commission's rules by disposing of unauthorized municipal solid waste, and burning material on his property without authorization to do so.

A. Texas Health & Safety Code

The Section 382.085(b) of the Texas Health & Safety Code states no person may "cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of any . . . commission rule or order."

B. Relevant Rules

30 TEX. ADMIN. CODE § 111.201, which pertains to control of air pollution, provides in relevant part as follows:

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed without written permission of the executive director.

30 TEX. ADMIN. CODE § 330.15(c), which pertains to the disposal of municipal solid waste, reads as follows:

(c) Except as otherwise authorized by this chapter, a person may not cause, suffer, allow, or permit the dumping or disposal of MSW [municipal solid waste] without the written authorization of the Commission.

V. EVIDENCE AND ARGUMENT

Mr. Nolan owns a 2.25 acre lot just outside the city limits of the City of Elgin, in Bastrop County, Texas (the Site). There is a substantial history of local complaints about the Site. The

ED produced evidence demonstrating that the Elgin Volunteer Fire Department has responded to numerous calls reporting unauthorized burning at the Site over recent years, and that Mr. Nolan has been repeatedly advised that such burning of wastes is prohibited. Moreover, Mr. Nolan has been issued Notices of Violation by the Bastrop County Environmental Office for previous illegal burning and dumping activities.¹

On June 8, 2009, Bastrop County officials responded to a substantial fire at the Site. Gretchen DeShay and Victor Lucero, Bastrop County Environmental Investigators, were on-site and observed firefighters battling the blaze. A variety of materials, such as demolition materials, plastics, tires, rims, wires, vehicles, mattresses, paint buckets, and electronic devices, were observed burning.²

County officials lodged a complaint about the Site with the TCEQ's Austin Regional Office. In response, Patricia Phillips, Environmental Investigator for the TCEQ's Austin Regional Office, visited the Site on June 9, 2009, to conduct a complaint investigation. Ms. Phillips was accompanied by personnel from the Bastrop County Environmental Department and law enforcement personnel.

During her investigation, Ms. Phillips observed evidence of the previous day's fire at the Site. Various areas were still smoldering and smoking, and small fires could be observed. Ms. Phillips noted a number of dilapidated and abandoned vehicles scattered throughout the Site, along with numerous piles of materials, some of which had evidence of previous burning activities. Ms. Phillips observed a large area that showed evidence of recent burning, and identified a wide array of materials that had been disposed of on the Site, including: mattresses, box springs, old tires, hub caps, wooden pallets, televisions, an air conditioning unit, refrigerators, bicycles, plastic barrels, metal barrels, paint buckets, aerosol cans, plastic oil and antifreeze containers, plastic drink bottles, plastic garbage bags (with unknown contents), plastic crates, wooden and metal cyclone fence sections, glass bottles, cardboard boxes, rugs, couches,

¹ See, TCEQ Ex. 2, pp. 2-3, 13, 33-45.

² TCEQ Ex. 2, pp. 2-3, 13.

sections of water hose, and demolition materials such as PVC pipes, concrete blocks, pieces of concrete, metal building materials, treated lumber, railroad ties, and insulated wires.³ Ms. Phillips estimated that 3,227 cubic yards of solid waste were illegally disposed of on the Site.⁴

The ED contended that burning on the Site constituted a potentially serious health threat to the community. Bastrop officials DeShay and Lucero both reported suffering from short-term health effects -- such as headaches, nausea, and trouble breathing -- after observing the Site on June 8, even though they were both roughly 300 feet away from, and generally upwind of, the fire. Likewise, Ms. Phillips reported feeling the effects from smoke at the Site following her June 9 investigation. According to the ED, there are numerous occupied residences near the Site, making the possibility of adverse health effects a serious concern.⁵ Based upon Bastrop County estimates of the size of a previous, similar fire at the Site, Ms. Phillips estimated that 297 cubic yards of waste were burned at the Site by Mr. Nolan in the June 8, 2009 fire.⁶

Based upon her investigation, Ms. Phillips determined that Mr. Nolan's actions at the Site constituted: (1) unauthorized outdoor burning in violation of TEX. HEALTH AND SAFETY CODE §382.085(b) and 30 TEX. ADMIN. CODE § 111.201; and (2) illegal dumping or disposal of municipal solid waste in violation of 30 TEX. ADMIN. CODE § 330.15(c).

After reviewing Ms. Phillips' report and looking at photographs of the Site, Mike Pace, a TCEQ Enforcement Coordinator, prepared a penalty calculation worksheet.⁷ Mr. Pace testified about the process he went through to arrive at the recommended penalty amount for each violation.

³ Ms. Phillips' findings were documented in an Investigation Report, TCEQ Ex. 2. Pictures of the Site taken by Ms. Phillips, which verify her observations, are found at pp. 19-25 of Ex. 2.

⁴ TCEQ Ex. 2, pp. 59-60.

⁵ TCEQ Ex. 2, pp. 2-3, 13.

⁶ *See also*, TCEQ Ex. 2, pp. 57-58.

⁷ TCEQ Ex. 1, pp. 8-14.

As to the illegal burning violation (TEX. HEALTH AND SAFETY CODE §382.085(b) and 30 TEX. ADMIN. CODE § 111.201) the ED estimated that the fire at the Site resulted in less than 100 tons per year of air pollutants. Therefore, Mr. Pace concluded that the Site should be considered as a “minor source” of air pollution pursuant to the agency’s penalty policy. Mr. Pace indicated that the “base penalty” amount for the illegal burning violation is \$10,000. Because the violation involved a minor risk of harm, however, Mr. Pace reduced the penalty by 90%, to \$1,000.

As to the illegal dumping violation (30 TEX. ADMIN. CODE § 330.15(c)) Mr. Pace indicated that the base penalty amount is \$10,000. Because the ED estimated that 3,227 cubic yards of solid waste were illegally disposed of on the Site, Mr. Pace concluded that the violation constituted a moderate risk of harm to human health or the environment and, thus, reduced the penalty by 75%, to \$2,500. He then multiplied this amount times three (reducing 72 violation days to three monthly events) raising the penalty to \$7,500.

In addition, Mr. Pace estimated that, had Mr. Nolan properly disposed of the 297 cubic yards of waste instead burning them, it would have cost him \$2,258. Thus, estimating that the economic benefit of the illegal burning to Mr. Nolan was \$2,258, Mr. Pace added that amount to the total penalty he recommended in this case.

In summary, Mr. Pace testified that, in total, the ED seeks \$10,758 in penalties from Mr. Nolan for the two violations and a requirement that Mr. Nolan take further corrective measures.⁸

Mr. Nolan contested whether the materials on the Site constituted solid waste. During cross-examination of the ED’s witnesses, he argued that the ED should have submitted materials from the Site to “testing” by A&M University or some other facility in order to determine what the materials were. Mr. Pace, however, testified that the materials found on the Site constituted “municipal solid waste” as defined by TCEQ rules.

⁸ See also, TCEQ Ex. 1, pp. 8-14, TCEQ Ex. 2, pp. 57-60.

Mr. Nolan also attempted, during cross-examination, to dispute the location of the Site. On the first page of the ED's Investigation Report, the location of the Site is described as "329 Houston St, Elgin, TX 78621."⁹ Mr. Nolan contended that this is not the correct address. During cross-examination, however, Ms. Phillips explained that, during her investigation, she discovered discrepancies in the property records and concluded there was no accurate street address for the Site. So, she tracked down a legal description for the Site using records from the Bastrop Central Appraisal District. According to Ms. Phillips and Mr. Pace, the correct legal description for the Site is Lot A178, Thomas Garretson Survey (Parcel ID #R13107), Jackson Street, Elgin, Bastrop County, Texas. This is the property description that was used by the ED in its Preliminary Report and Petition (EDPRP), and this property description, and accompanying records from the Bastrop Central Appraisal District, are included in the ED's Investigation Report.¹⁰

Mr. Nolan admitted that he has burned materials on the Site, but insisted that he "wasn't trying to hurt anybody." He also complained that no one had told him, before the fact, that he could not dispose of or burn materials at the Site.

Finally, Mr. Nolan claimed that he would be unable to pay a \$10,758 administrative penalty. He did not, however, offer any other evidence to support that claim.

VI. ALJ'S RECOMMENDATION

The ED has met its burden to prove the violations. The evidence clearly demonstrates that Mr. Nolan allowed items of municipal solid waste to be disposed of and burned on the Site. Mr. Nolan's contention that the items on his property must be tested before they can be determined to be municipal solid waste is not convincing. The definitions of "solid waste"¹¹ and "municipal solid waste"¹² are quite broad and easily include the various types of wastes observed by Ms. Phillips and depicted in the photographs taken by her.

⁹ TCEQ Ex. 2

¹⁰ TCEQ Ex. 2, pp. 26-30.

¹¹ 30 TEX. ADMIN. CODE § 330.3(145).

¹² 30 TEX. ADMIN. CODE § 330.3(88).

As can clearly be seen from the photographs, municipal solid wastes are widely strewn throughout the Site, and there is clear evidence of a widespread fire among the waste, including smoke and flames. Mr. Nolan is responsible for improperly burning the wastes on June 8, 2009.

Strictly speaking, Mr. Nolan's complaint that no one told him he could not dispose of waste and conduct burning at the Site is irrelevant. The TCEQ is not obligated to personally notify him of his legal rights and duties. Moreover, even if it were relevant, Mr. Nolan's complaint does not ring true. The evidence in the record clearly shows that, on multiple occasions prior to the incidents at issue in this case, Mr. Nolan had been admonished by county officials to cease accepting waste and conducting burnings, and to clean up his property.

Mr. Nolan's complaint that Ms. Phillips' investigation report wrongly identifies the Site as being located at 329 Houston Street is also without merit. The purpose of an investigation is to track down the relevant facts. In this case, Ms. Phillips began with a street address. In the course of her investigation, she determined that the street address was incorrect and, therefore, she appropriately and reasonably tracked down the property description for the Site used by the Bastrop Central Appraisal District. This is the property description used by the ED in this matter and the ED has proved that it accurately describes the Site.

The Commission is authorized to assess an administrative penalty against a person who violates provisions of the Texas Health & Safety Code within the Commission's jurisdiction or a rule adopted by the Commission. In this case, the penalty may not exceed \$10,000 per day of violation.¹³ Additionally, the Commission may order the violator to take corrective action.¹⁴ The ALJ finds that the administrative penalty recommended by Staff is warranted on the grounds that Mr. Nolan violated the environmental laws and regulations noted above. The ED appropriately considered the factors set forth in TEX. WATER CODE § 7.053 and followed the Commission's Penalty Policy in calculating the total proposed penalty in the amount of \$10,758.

¹³ TEX. WATER CODE § 7.054(c).

¹⁴ TEX. WATER CODE § 7.073.

Although Mr. Nolan claimed an inability to pay the administrative penalty, the burden of proof was on him to prove that a lesser penalty was justified, such as by producing financial records.¹⁵ Mr. Nolan made no effort to meet his burden of proof on this issue.

VII. CONCLUSION

The ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law set forth in the attached Proposed Order concluding that the alleged violations occurred, assessing an administrative penalty of \$10,758 against Mr. Nolan for the violations alleged and established in this proceeding, and requiring corrective action by Mr. Nolan.

SIGNED July 16, 2010.



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹⁵ 30 TEX. ADMIN. CODE § 70.8.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against
and Requiring Corrective Action By
Clarence Nolan
TCEQ DOCKET NO. 2009-1347-MLM-E
SOAH DOCKET NO. 582-10-3327**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring corrective action by Clarence Nolan (Respondent). Hunter Burkhalter, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on July 2, 2010, in Austin, Texas, and presented the Proposal for Decision.

The parties to the proceeding are Respondent; and the Commission's Executive Director (ED), represented by Phillip M. Goodwin, attorney in TCEQ's Litigation Division. After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Respondent owns a 2.25 acre lot located just outside the city limits of the City of Elgin, Bastrop County, Texas (the Site).
2. The legal description of the Site is Lot A178, Thomas Garretson Survey (Parcel ID #R13107), Jackson Street, Elgin, Bastrop County, Texas.
3. Respondent engages in unauthorized disposal of municipal solid wastes at the Site.
4. On June 8, 2009, Respondent burned approximately 297 cubic yards of solid waste at the Site in violation of a prohibition on outdoor burning. A variety of materials, including

demolition materials, plastics, tires, rims, wheels, vehicles, mattresses, paint buckets, and electronic devices were burned.

5. By burning 297 cubic yards of solid waste rather than properly disposing of it, Respondent incurred an economic benefit of \$2,258.
6. The burn did not meet an exception to the prohibition on outdoor burning.
7. Bastrop County officials and local firefighters were called to the Site to respond to the fire.
8. As of June 9, 2009, approximately 3,227 cubic yards of municipal solid waste had been disposed of or discharged at the Site, including: mattresses, box springs, old tires, hub caps, wooden pallets, televisions, an air conditioning unit, refrigerators, bicycles, plastic barrels, metal barrels, paint buckets, aerosol cans, plastic oil and antifreeze containers, plastic drink bottles, plastic garbage bags (with unknown contents), plastic crates, wooden and metal cyclone fence sections, glass bottles, cardboard boxes, rugs, couches, sections of water hose, and demolition materials such as PVC pipes, concrete blocks, pieces of concrete, metal building materials, treated lumber, railroad ties, and insulated wires.
9. On August 10, 2009, the TCEQ issued a Notice of Enforcement for Complaint Investigation to Respondent.
10. On December 16, 2009, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) in accordance with TEX. WATER CODE ANN. § 7.054, alleging that Respondent violated 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with the prohibition on outdoor burning. The ED further alleged that Respondent violated 30 TEX. ADMIN. CODE § 330.15(c) by failing to dispose of municipal solid waste at an authorized facility.
11. The ED recommended the imposition of an administrative penalty in the amount of \$10,758 and corrective action by Respondent to bring the Site into compliance.

12. The proposed penalty consists of a penalty of \$1,000 for failing to comply with the prohibition on outdoor burning; plus a penalty of \$7,500 for three instances of failing to dispose of municipal solid waste at an authorized facility; plus \$2,258 for the economic benefit incurred by Mr. Nolan for failing to comply with the prohibition on outdoor burning.
13. An administrative penalty of \$10,758 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in TEX. WATER CODE ANN. § 7.053 and in the Commission's Penalty Policy.
14. On February 17, 2010, Respondent requested a contested case hearing on the allegations in the EDPRP.
15. On March 19, 2010, the case was referred to SOAH for a hearing.
16. On March 25, 2010, the Commission's Chief Clerk issued a notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
17. On April 15, 2010, a preliminary hearing was held, at which jurisdictional documents were admitted and the ALJ confirmed jurisdiction over this matter on the part of the TCEQ and SOAH.
18. The hearing on the merits was conducted on July 2, 2010, in Austin, Texas, by ALJ Hunter Burkhalter. The ED was represented by his attorney, Phillip Goodwin, and Respondent appeared, *pro se*.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Health & Safety Code, or any rule, order, or permit adopted or issued thereunder.

2. Under TEX. WATER CODE § 7.052, a penalty may not exceed \$10,000 per violation, per day, for each of the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE §§ 5.013 and 7.002.
4. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE § 7.073.
5. As required by TEX. WATER CODE § 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.
6. As required by TEX. GOV'T CODE §§ 2001.051(1) and 2001.052; TEX. WATER CODE § 7.058; 1 TEX. ADMIN. CODE § 155.401, 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.
7. 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.
8. Based on the above Findings of Fact and Conclusions of Law, Respondent violated TEX. HEALTH & SAFETY CODE § 382.085(b), and 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c).
9. In determining the amount of an administrative penalty, the ED considered the factors required by TEX. WATER CODE ANN. § 7.053, including:
 - The 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 2002.
11. 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 correctly calculated the penalties for the alleged violation and a total administrative penalty of \$10,758 is justified and should be assessed against Respondent.
12. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

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

1. Clarence Nolan (Respondent) is assessed an administrative penalty in the amount of \$10,758 for violations of TEX. HEALTH & SAFETY CODE § 382.085(b), and 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c). The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order will 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 that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Clarence Nolan; Docket No. 2009-1347-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. Immediately upon the effective date of this Order, Respondent shall:
 - a. Cease any additional waste disposal at the Site; and
 - b. Cease all unauthorized burning of waste at the Site.

3. Within 30 days after the effective date of the Commission Order, Respondent shall remove all municipal solid waste and from the Site and dispose of it an authorized facility.

4. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2 and 3. 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.”

The certification and other documentation shall be submitted 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:

Barry Kalda, Waste Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
2800 S. IH-35, Suite 100
Austin, Texas 78704-5712

5. 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.
6. 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.
7. 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.
8. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
9. 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

Bryan W. Shaw, Chairman
For the Commission