

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 19, 2010

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

Re: SOAH Docket No. 582-10-3449; TCEQ Docket No. 2009-1612-PST-E; In Re:
The Executive Director of the Texas Commission on Environmental Quality v.
Earnest M. Teel

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 **November 8, 2010**. Any replies to exceptions or briefs must be filed in the same manner no later than **November 18, 2010**.

This matter has been designated **TCEQ Docket No. 2009-1612-PST-E; SOAH Docket No. 582-10-3449**. 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 "HB", written over a printed name.

Hunter Burkhalter
Administrative Law Judge

HB/slc
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: EARNEST M. TEEL

SOAH DOCKET NUMBER: 582-10-3449

REFERRING AGENCY CASE: 2009-1612-PST-E

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ SHARON CLONINGER

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)
bcoy@tceq.state.tx.us

TCEQ PUBLIC INTEREST COUNSEL

MARSHALL COOVER
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P. O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-0620 (PH)
(512) 239-3434 (FAX)
mcoover@tceq.state.tx.us

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EARNEST M. TEEL
C/O LORI TEEL HARRIS
17 SOUTH HOLLAND RD.
MANSFIELD, TX 76063

EARNEST M. TEEL

xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-10-3449
TCEQ DOCKET NO. 2009-1612-PST-E**

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

V.

**EARNEST M. TEEL,
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 (Commission) brings this enforcement action against Earnest M. Teel. The ED alleges that Mr. Teel violated the Commission's rules relating to petroleum underground storage tanks (USTs). The Administrative Law Judge (ALJ) finds that the ED proved the violations and recommends that the Commission approve the corrective action, but deny the requested administrative penalty.

I. JURISDICTION AND NOTICE

Mr. Teel does not dispute the Commission's jurisdiction or notice, 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 concerning jurisdiction and notice.

II. BACKGROUND AND PROCEDURAL HISTORY

The ED alleges that Mr. Teel owns property that was once utilized as a gas station at 505 N. US Highway 287, Elkhart, Texas (the Site). Although the gas station is no longer in operation, the USTs associated with the station remain on the Site.

On September 28, 2009, the ED issued a Notice of Enforcement (NOE) to Mr. Teel, alleging that he had violated certain rules relating to USTs.¹ The ED filed a Preliminary Report and Petition (the Petition) on January 14, 2010. On March 25, 2010, the ED requested the Commission's Chief Clerk to refer this dispute to the State Office of Administrative Hearings (SOAH) for hearing, which the Chief Clerk did.

The hearing on the merits convened on August 30, 2010, before ALJ Hunter Burkhalter. Staff Attorney Marshall Coover represented the ED. Mr. Teel appeared, *pro se*, and was assisted by his daughter, Lori Harris. The Commission's Office of Public Interest Counsel (OPIC) was represented by attorney Blas Coy. The record closed that day.

III. DISCUSSION

A. Allegations

In the Petition, the ED alleges that Mr. Teel violated two rules:

- 1) that he failed to timely either permanently remove from service or upgrade the USTs, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2); and
- 2) that he failed to notify the Commission of any change or additional information regarding the USTs (specifically, the change in operational status of the USTs) within 30 days of the occurrence of the change, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

In the Petition, the ED seeks an administrative penalty of \$3,675 and an order requiring that Mr. Teel take specified corrective measures to permanently remove the USTs. At the outset of the hearing, the ED announced its withdrawal of the alleged violation of 30 TEX. ADMIN. CODE § 334.7(d)(3)(the failure to notify violation). The ED also announced that, because it was withdrawing one of the

¹ Ex. ED-2, pp. 13-14.

alleged violations, it was also correspondingly reducing the amount of the administrative penalty it seeks to \$2,625.²

B. Evidence

The ED presented the testimony of Commission investigator Barry Kerner. Mr. Kerner investigated the Site on April 30, 2009. During his onsite investigation, he was accompanied by Mr. and Mrs. Teel. Mr. Kerner's Investigation Report was introduced into evidence.³ Mr. Kerner testified that the Site was formerly used as a gas station but, by the time of his investigation, the gas station had long been closed. Mr. Kerner determined, and Mr. Teel confirmed, that there are three USTs on the Site. The Commission's registration database lists the three USTs on the Site as having capacities of 3,000 gallons, 5,000 gallons, and 6,000 gallons, respectively.⁴ Mr. Kerner determined that the tanks are made of single-wall steel construction. Mr. Kerner spoke to Mr. and Mrs. Teel, who confirmed that they own the Site and reported that the gas station has been out of business since 1993.

According to Mr. Kerner, the USTs need upgrading. In particular, the tanks lack the required cathodic protection system to prevent corrosion. As a result of the inspection, Mr. Kerner found two violations: (1) failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; and (2) failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.⁵

² As discussed in more detail below, at the end of the hearing, the ED agreed to reduce the proposed penalty even further, to \$1,200, to be paid in monthly \$100 installments.

³ Ex. ED-1.

⁴ Ex. ED-1.

⁵ As already noted, the second alleged violation has now been dropped by the ED.

On June 1, 2009, a Notice of Violation (NOV) for these alleged violations was sent to Mr. Teel.⁶ The NOV directed him to, by July 1, 2009, send documentation to the ED demonstrating that he had corrected the violations. On June 25, 2009, Mr. Teel sent a letter to Mr. Kerner in which he explained that he last accepted delivery of gasoline into the USTs in December 1992 and closed the business in January 1993. He also asserted that he was financially unable to have the tanks removed. “We survive on our monthly Social Security income and have no additional savings. Because of this there is no way we can have the tanks removed.”⁷ On September 11, 2009, Mr. Kerner conducted a follow-up file review investigation in order to determine whether Mr. Teel had corrected the alleged violations, and concluded that he had not done so.⁸

Mr. Kerner explained that the deadline for upgrading the USTs has passed, and that to comply with the rule, Mr. Teel would need to permanently remove the tanks from service. He estimated that it would cost between \$5,000 and \$10,000 per tank to have them removed. Mr. Kerner testified that property owners are responsible for USTs found on their property, and that the USTs on the Site are not statutorily exempt, pursuant to TEX. WATER CODE § 26.344, from the requirement to be removed. The ED also produced various documentation proving that Mr. Teel owns the Site and that he has not removed the USTs from service.⁹

After reviewing Mr. Kerner’s report, TCEQ Enforcement Coordinator Tate Barrett prepared a penalty calculation worksheet for this alleged violation.¹⁰ Mr. Barrett testified about the process he went through to arrive at the recommended penalty amount for the violation. He explained that the “base penalty” amount for a failure to remove a UST is \$10,000. Because the violation involved only a potential risk of a major release of pollutants into the environment, however, Mr. Barrett reduced the penalty by 75%, to \$2,500, which he described as the “violation base penalty.” He

⁶ Ex. ED-1.

⁷ Ex. ED-2.

⁸ Ex. ED-2.

⁹ Exs. ED-3, ED-4, and ED-5.

¹⁰ Ex. ED-7.

considered the violation to be a single violation event (condensing 29 violation days between the date of Mr. Kerner's record review and the date of Mr. Barrett's penalty calculation into a single, monthly event). Because Mr. Teel had previously been issued an NOV for the same violation, Mr. Barrett testified that he added another \$125 to the penalty sought from Mr. Teel (*i.e.*, 5% of \$2,500) in accordance with the agency's penalty policy.¹¹ In summary, Mr. Barrett testified that the ED seeks \$2,625 in penalties from Mr. Teel for the violation, an amount that is consistent with the agency's penalty policy, and consistent with the amounts assessed in similar cases. Mr. Barrett also testified that Mr. Teel should be required to remove or upgrade the USTs. Mr. Barrett estimated that it would cost Mr. Teel \$10,500 to have all three USTs removed.

Mr. Teel did not testify, nor did he meaningfully challenge the substance of the allegations against him. Instead, the focus of the defense was on Mr. Teel's financial inability to pay the penalty or have the USTs removed. His daughter, Lori Harris testified that her parents recently moved into her house. According to Ms. Harris, her parents are in economic dire straits, with their social security benefits constituting their primary source of income. Ms. Harris is paying for many of her parents' living expenses.

Ms. Harris explained that, in March 2010, she and her parents submitted to the ED all of the documentation requested by the ED in order to make a determination as to Mr. Teel's inability to pay administrative penalties (the Teel Inability to Pay Documents). A copy of the Teel Inability to Pay Documents were admitted in the record.¹² In that documentation, Mr. Harris described her father's physical condition as follows:

My Dad is 82 years old, legally blind and not able to get around very well. A cane is used for assistance when getting up and down and walking. He is also extremely hard of hearing. In the last couple of weeks he has been diagnosed with third stage renal disease. He had triple bypass surgery a few years ago and never fully recovered.

¹¹ See also Ex. ED-7 and ED-8.

¹² Ex. Resp. 1.

As to their finances, Ms. Harris explained that her parents are unable to meet their current monthly obligations, and that family and friends regularly provide financial assistance for living expenses. Ms. Harris asked that the Commission exercise leniency with regard to her father. Ms. Harris testified that the ED's staff reviewed the Teel Inability to Pay Documents and agreed that they demonstrated Mr. Teel was unable to pay the penalty sought. Finally, Ms. Harris testified that her family has obtained estimates that the cost of UST removal would be roughly \$21,000.

Mr. Teel's granddaughter, Stephanie Scott, also testified on his behalf. She spoke eloquently about the excellent character of her grandfather, noting, among other things, that he is a veteran of both World War II and the Korean conflict, earning a remarkable four bronze stars in the process. He has been married for 61 years and is retired from the Texas Department of Criminal Justice. She explained that the simple problem is that there is no money to have the tanks removed, much less pay an administrative penalty. According to Ms. Scott, this enforcement action has placed great stress on Mr. Teel and left him with a feeling of failure. She asked that the allegations against Mr. Teel be dismissed.

The ED called, as a rebuttal witness, Paige Seidenberger. Ms. Seidenberger is a financial analyst for the Commission. She explained that she reviewed the Teel Inability to Pay Documents and concluded, consistent with the TCEQ's inability to pay policy, that Mr. Teel is indeed financially unable to pay the administrative penalty sought by the ED. She explained that Mr. Teel has no assets that could be liquidated to pay the penalty, and the Teels have a negative monthly cash flow. Instead of the \$2,625 sought by the ED, Ms. Seidenberger recommended that Mr. Teel be required to pay a penalty of only \$1,200 in monthly installments of \$100, which she asserts is the minimum penalty allowed by the agency's inability to pay policy.¹³ Ms. Seidenberger also stated that the fact that Mr. Teel is unable to pay an administrative penalty does not exempt him from the requirement to take corrective action to have the USTs removed. Ms. Seidenberger conceded that one of the purposes of imposing an administrative penalty was to deter the violator from committing more

¹³ See Ex. ED-10.

violations in the future. She agreed that no such purpose would be accomplished in this case because there was no risk that Mr. Teel would engage in new UST violations in the future.

During closing arguments, counsel for the ED announced that, consistent with Ms. Seidenberger's testimony, the ED would seek an administrative penalty of only \$1,200, to be paid in 12 monthly installments of \$100. Counsel for OPIC argued that no administrative penalty should be assessed. OPIC's counsel gave two reasons for this position. First, the penalty will not serve any value as a deterrent, because there is already no risk of Mr. Teel committing UST violations in the future. Second, any money that Mr. Teel is forced to pay as a penalty would further reduce his ability to take corrective action at the Site.

C. Analysis

The ED presented sufficient evidence that Mr. Teel has neither timely upgraded nor permanently removed the USTs as required by 30 TEX. ADMIN. CODE § 334.47(b). Indeed, Mr. Teel never contended otherwise.

The real question concerns what should be done about the violation. The Commission is empowered to order a person found to be in violation of a statute or rule within the Commission's jurisdiction to order the person to take corrective action to correct the violation.¹⁴ Further, the law clearly mandates that an owner of an existing UST that was not brought into timely compliance with the minimum upgrade requirements is obligated to permanently remove that UST from service.¹⁵ Therefore, the ALJ concludes that the ED is entitled to judgment that the corrective action requested in the ED's Petition -- *i.e.*, that Mr. Teel permanently remove the USTs from service -- is necessary and appropriate.

¹⁴ TEX. WATER CODE § 7.073.

¹⁵ 30 TEX. ADMIN. CODE § 334.47(a)(2).

On the other hand, the ALJ concludes that the administrative penalty sought by the ED is not appropriate under the circumstances of this case. The Commission may assess an administrative penalty against a person who violates provisions of the Water Code or a rule adopted by the Commission.¹⁶ When determining the size of the penalty, the Commission must consider the factors listed in TEX. WATER CODE § 7.053. Through Mr. Barrett's testimony, the ED proved that, as to all but the last factor -- Section 7.053(4)("any other matters that justice may require") -- the agency correctly and appropriately considered the penalty factors in arriving at the proposed administrative penalty of \$2,625. Moreover, through Ms. Seidenberger's testimony, the ED proved that the ED appropriately reduced the penalty down to \$1,200 consistent with the Commission's inability to pay policy.

Nevertheless, the ALJ concludes that the assessment of any administrative penalty in this case would be inconsistent with the legislative intent behind Section 7.053(4). If we assume, as we must, that non-compliant USTs pose a substantial risk to the environment, then the ED's need to recover an administrative penalty is clearly of less importance than the need to have the USTs on the Site permanently removed. Any penalty assessed against Mr. Teel will further reduce the likelihood that the necessary corrective action will be taken at the Site. Moreover, as argued by OPIC's counsel, any administrative penalty assessed against Mr. Teel will have no deterrent value. Thus, having considered other matters as justice may require, the ALJ recommends that no administrative penalty be assessed in this case.

¹⁶ TEX. WATER CODE § 7.051(1).

IV. CONCLUSION

Based on the evidence presented, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law in the attached Order, and order Mr. Teel to take the corrective action requested by the ED, but assess no administrative penalty against Mr. Teel.

SIGNED October 19, 2010 .



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Ordering Corrective Action by Earnest M. Teel; TCEQ Docket No. 2009-1612-PST-E; SOAH Docket No. 582-10-3449

On _____, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Amended Preliminary Report and Petition (Amended EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Earnest M. Teel (Respondent). A Proposal for Decision (PFD) was presented by Hunter Burkhalter, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

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 real property on which he once operated a gas station at 505 N. U.S. Highway 287, Elkhart, Texas (the Facility).
2. The gas station at the Facility has been out of business since 1993.
3. Three inactive underground storage tanks (USTs) that are not exempt or excluded from regulation exist beneath the Facility.

4. On April 30, 2009, a Commission investigator documented that Respondent had violated the following:
 - Alleged Violation #1: 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, USTs for which applicable components were not brought into timely compliance with the upgrade requirements.
 - Alleged Violation #2: 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; specifically, the registration was not updated to reflect the correct ownership information and current operational status of the USTs at the Facility; and
5. On June 1, 2009, Respondent was served with a Notice of Violation letter.
6. On January 14, 2010, the Executive Director (ED) filed a Preliminary Report and Petition (EDPRP), in accordance with TEX. WATER CODE ANN. § 7.054. In the EDPRP, the ED alleged the two violations identified in Finding of Fact No. 4 and recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$3,675 against Respondent and that the Commission order Respondent to take certain corrective actions.
7. The ED mailed a copy of the EDPRP to Respondent at 505 N. US Highway 287, Elkhart, Texas, on the same date that it was filed.
8. Respondent filed an answer to the original EDPRP and requested a hearing.
9. On March 25, 2010, the ED referred this matter to SOAH for a contested case hearing.
10. On April 1, 2010, the TCEQ Chief Clerk mailed notice to Respondent of the preliminary hearing scheduled for April 29, 2010.

11. The notice of hearing:
 - Indicated the time, date, place, and nature of the hearing;
 - Stated the legal authority and jurisdiction for the hearing;
 - Indicated the statutes and rules the Executive Director alleged Respondent violated.
 - Advised Respondent, in at least twelve-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
 - Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
12. On April 29, 2010, the ED and Respondent appeared at a preliminary hearing and agreed to a procedural schedule leading to an evidentiary hearing on August 30, 2010.
13. The hearing on the merits was held on August 30, 2010. The ED, Respondent, and the Commission's Office of Public Interest Counsel (OPIC) appeared and participated in the hearing. The record closed that same day.
14. At the hearing, the ED announced that he was dropping Alleged Violation #2 identified in Finding of Fact No. 4, and that it was reducing the administrative penalty he seeks to \$1,200, to be paid in 12 monthly installments of \$100.
15. Respondent is financially unable to pay any administrative penalty that may be assessed against him, having a negative monthly cash flow and lacking assets that could be liquidated.
16. If an administrative penalty were assessed against Respondent, it would reduce his ability to pay for the necessary corrective action requested by the ED at the Facility.

17. Respondent is 82 years old and in ill health.
18. Because the former gas station at the Facility has long been closed and there is no risk that Respondent will engage in new UST-related violations in the future, the assessment of an administrative penalty against him would serve no deterrent value.
19. No administrative penalty should be assessed against Respondent.

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 Texas Water Code or of the Texas Health and Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Respondent owns the USTs located on the Facility.
3. 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.
4. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE ANN. § 7.073.
5. 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 and the proposed penalties and corrective actions.
6. As required by TEX. GOV'T CODE ANN. §§ 2001.051(1) and 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 penalty and corrective actions sought.

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 Findings of Fact and Conclusions of Law, Respondent violated 30 TAC § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, USTs for which applicable components were not brought into timely compliance with the upgrade requirements.
9. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 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. The Commission has adopted a Financial Review Policy for Administrative Penalty Inability to Pay Claims, setting forth its policy regarding financial analyses to determine a respondent's ability to pay administrative penalties, effective September 19, 2005.

12. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, the Commission's Penalty Policy, and the Commission's Financial Review Policy for Administrative Penalty Inability to Pay Claims, no administrative penalty should be assessed against Respondent.
13. Based on the above Findings of Fact, Respondent should be required to take the corrective action 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. Within 30 days after the effective date of this Order, Earnest M. Teel shall permanently remove the UST systems from service, in accordance with 30 TAC § 334.55.
2. Within 60 days after the effective date of this Order, Earnest M. Teel shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1. 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 fines and imprisonment for knowing violations.”

The certification shall be sent to:

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

Austin, TX 78711-3087

with a copy to:

Mike Brashear, Waste Section, Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Dr.
Tyler, TX 75701-3734

3. The ED 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 ED determines that Respondent has not complied with one or more of the terms or conditions in this Commission 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 TEX. GOV'T CODE ANN. § 2001.144.
6. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
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

**Bryan W. Shaw, Chairman
For the Commission**