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16 February 2011

Chief Clerk of the TCEQ
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<http://www10.tceq.state.tx.us/epic/efiling/>

Re: SOAH DOCKET No. 582-10-3857, TCEQ DOCKET NO. 2009-1764-MSW-E

TCEQ v Joabert Development Company

Enclosed is Respondent Joabert Development Company's Respondent's Exceptions To The Administrative Law Judge Proposed Order And Definition Of The Word "Suffer" And Suggestion For Proposed Order

Joabert would like a oral hearing on these and other matters pending in this Court.

Thank you very much



Burton Kahn, Vice President
Joabert Development Company

Cc:
Texas Commission On Environmental Quality
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**SOAH DOCKET NO. 582-10-3857
TCEQ DOCKET NO. 2009-1764-MSW-E**

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, Petitioner	§ § § §	BEFORE THE STATE OFFICE
VS.	§	OF
JOABERT DEVELOPMENT COMPANY, Respondent		ADMINISTRATIVE HEARINGS

**RESPONDENT” EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE PROPOSED
ORDER AND DEFINITION OF THE WORD “SUFFER” AND
SUGGESTION FOR PROPOSED ORDER**

Now, Comes Joabert Development, Company, Respondent (Joabert), makes this exception and suggests that the Administration Law Judge (ALJ) reverse its Conclusion of Law and Proposed Order as pursuant to 30.Tex.Admin.Code § 80.257.

The ALJ found in its Proposed Order that Joabert was liable for suffering the dumping and disposal of MSW on property owned or controlling it, The ALJ did not find that Joabert had permitted or allowed the dumping of MSW.(see Finding of Fact Item 13). The ALJ chose a part of the first of several definitions of “*suffer*” in the Webster’s 3rd International Dictionary (Webster’s 3rd) which deals with personal pain, as being the relevant definition of “*suffer*” as per the legislative intent on its use. We disagree. The following are analysis of the definition of “*suffer*”:

- A-1. WEBSTER’S 3RD INTERNATIONAL DICTIONARY-p2**
- A-2. WEBSTER’S NEW DICTIONARY 2002-p3**
- B-1. BLACKS LAW DICTIONARY-p4**
- B-2. BLACKS LAW DICTIONARY 9th EDITION-p4**
- B-3. BLACKS LAW DICTIONARY 4th EDITION-p4**
- C-1 INTERNET DICTIONARY-p5**
- C-2 INTERNET THESAURUS-p6**
- D-1.CASE LAW DEFINING SUFFER CASES-p7**
- E. CONCLUSION-p8**
- F. PRAYER-p9**

DEFINITION OF THE WORD “SUFFER”

A-1. WEBSTER’S 3RD INTERNATIONAL DICTIONARY

There are however several definitions of “*suffer*” offered in Webster’s 3rd

Exhibit A-1

Definition 1)

“to submit or be forced to endure the infliction, imposition or penalty of; bear as a victim (*suffer*- martyrdom); (*suffer* -a years imprisonment); to be subjected to physical or mental pain because of; endure with distress (*suffer* -thirst) (*suffer* -insults); to feel keenly or acutely (*suffer* -pain of body) (grief of mind); labor under the greatest handicap which our side *suffers*- in entering the political conference- Wilson Woodside”

It should be noted that in all of the examples of definition 1) except the last one refer to physical, mental or bodily pain. Physical and bodily pain is clearly not what the legislators had in mind when they chose the phrase “*suffer, allow, cause, permit*” the dumping of Municipal Solid Waste (MSW).

In the last example of definition 1), “labor under the greatest handicap which our side suffers in entering the political conference”, the implication is that the party or side entered the political conference VOLUNTARILY with at least rudimentary knowledge that a handicap was to be suffered. The examples following the definition must be read.

Definition 2)

“to go or pass through (as harm or loss) : UNDERGO most or all genes suffer mutational changes from time to time — Theodosius Dobzhansky> Experience <the company suffered —a 35% drop in sales the first quarter —Wall Street Journal) SUSTAIN, (records that had suffered damage during storage)”

Definition 3)

“to endure or undergo without sinking : have power to resist or sustain; To bear up under; SUPPORT <suffer through half an hour of standing in line for the sake of a five-minute ride> suffer used chiefly in negative Statements (shrubs that cannot suffer a cold winter) ,(never able to suffer the slightest pain>

Definitions 2 and 3 are in a category of either passing through and delays and are not applicable to the dumping of MSW nor are they analogous with the other terms in phrase “cause, suffer, allow or permit”.

Definition 4a)

“not to forbid or hinder • ALLOW, PERMIT (in later years suffered his board to grow long.-(K.W.Colgroye)

Surely the Webster’s 3d definition 4a) is what the legislators had in mind since in part it paraphrases the words used in the 30 TAC § 330.15(c). It also gives a special meaning to the word suffer. It gives it a cause which is slightly different than ALLOW and PERMIT.

Definition 4b)

“to put up with : TOLERATE)to proud of its revolutionary *tradition* to suffer dictatorship gladly (W.L.Burn)”

The antithesis of this definition may have some interest in the context of 30 TAC § 330.15(c). There is case law *FRANCE v. SOUTHERN EQUIPMENT CO, supra* that says “tolerate or put up” with is a viable definition.

Definition 5)

chiefly dial : to cause pain .or. suffering to

Physical and bodily pain is clearly not what the legislators had in mind when they chose the phrase “*suffer, allow, cause, permit*” the dumping of Municipal Solid Waste (MSW).

The definitions from Webster’s 3rd International Dictionary of “*suffer*” as per above are related to 3 categories: 1. Physical and bodily pain; 2 Passing through or delays; 3 Allow and permit.

A-2. WEBSTER’S NEW DICTIONARY 2002

To more readily distinguish the common usage of “suffer” as it relates to common English and this case, we look to the smaller edition of Webster’s

Dictionaries. The Webster's New Dictionary 2002 is such a dictionary **EXHIBIT A-2**.

The Webster's New Dictionary 2002 states "*suffer*"

1. experience pain loss or hardship
2. permit

The definitions from Webster's New Dictionary 2002 of "*suffer*" as per above are related to 2 categories: 1. Physical and bodily pain; and 2 Allow and permit.

B-1. BLACKS LAW DICTIONARY

It is common amongst US Jurisprudences to use the latest edition of Blacks Law Dictionary as a preferred or at least on par with the Webster or Oxford Dictionaries. We note that there are different meanings ascribed by different sources. In point, however whether or not to suffer has to have the element of knowledge. In case at hand Joabert in its pleadings Defendant's Sur-Reply To Executive Director Of The Texas Commission On Environmental Quality Response To Motion To Dismiss **EXHIBIT B-1, page 2** has submitted reference to Blacks Law Dictionary with the Definition of "*suffer*" and the Ed raised no objection to the definition nor to the use of Blacks Dictionary as a reference source. Therefore Blacks Law dictionary should be the choice of primary reference source.

B-2. BLACKS LAW DICTIONARY 9th EDITION

Under suffer Blacks Law Dictionary 9th Edition **EXHIBIT B-2** states
suffer, vb. (14c)

1. To experience or sustain physical or emotional pain, distress, or injury <suffer grievously><suffer damages>. [Cases: Damages 31, 57.1.]
2. To allow or permit (an act, etc.) <to suffer a default

The definitions from Blacks Law Dictionary 9th Edition of "*suffer*" as per above are related to 2 categories: 1. Physical and bodily pain; and 2 Allow and permit.

B-3. BLACKS LAW DICTIONARY 4th EDITION

Under suffer Blacks Law Dictionary 4th Edition **EXHIBIT B-3** states: SUFFER

Definition 1).

“To allow, to admit, *Gregory v. Marks*, C.C.111., Fed.Cas.No.5, 802; 10 Fed.Cas. 1194, 1198; *Osborne v. Winter*, 133 Cal App 664, 24 P.2d 892. It includes knowledge of is to be done under sufferance. *First Nat. Bank & Trust Co. of Port Chester v. New York Ins. Co.*, 171 Misc. 854, 12 N.Y.S.2d 703, 709.”

Definition 2).

“Also to have the feeling or sensation that arises he action of something painful, distressing like; to feel or endure pain; to endure or go without sinking; to support; to bear up to be affected by; to sustain; to expert- to feel pain, physical or mental. The customary use of the word indicates some experience conscious pain. *New York Life Ins. Co. v. CalC.C.A.M.*, 90 F.2d 896, 898.”

Definition 3).

“To Suffer an act to be done or a condition to exist is to permit or consent to it; to approve of it, and not to hinder it. It implies knowledge a willingness of the mind and responsible control or ability to prevent, *Wilson v. Nelson*, U.S.22 S.Ct. 74, 46 L.Ed. 147; *Selleck v. Selleck*, Conn. 505; *Gregory v. U. S.CCNY*, Fed.Cas. No 5803, 10 Fed.Cas.1197; *In re Thomas*, D.C.Pa., 103 F.272,274; *Allison v. Commonwealth*, 221 Ky. 205, 298 S.W.”

The definitions from Blacks Law Dictionary 4th Edition of “*suffer*” as per above are related to 2 categories: 1. Physical and bodily pain; and 2 Allow and permit.

C-1 INTERNET DICTIONARY

The ALJ stated that the most common definition should be used. In todays world the Internet source is the most common use. We have used Your Dictionary.com for a reference. **EXHIBIT C-1.**

suffer (sufar)
transitive verb

Definition 1

“to undergo (something painful or unpleasant, as injury, grief, a loss, etc.); be afflicted with”

Definition 2

“to undergo or experience (any process, esp. change)”

Definition 3

“to allow; permit; tolerate”

Definition 4

“to bear up under; endure: now chiefly in negative constructions:
they could not suffer opposition

The definitions from YourDictionary.com of “*suffer*” per above are related to 4 categories: 1. Physical and bodily pain;2 Passing through or delays;3 Allow and permit.4.Endure.

C-2 INTERNET THESAURUS

The ALJ stated that the most common Thesaurus definition should be used. In today’s world the Internet source is the most common use. We have used Thesaurus.com for a reference. **EXHIBIT C-2 .**

suffer

Main Entry: **suffer**

Part of Speech: *Verb*

Definition: Be in pain

Synonyms: ache, agonize, ail, be affected, be at disadvantage, be convulsed, be handicapped, be impaired, be racked, be wounded, brave, complain of, deteriorate, droop, endure, experience, fall off, feel wretched, flag, get, go through, grieve, have a bad time, hurt, languish, pain, sicken, smart, undergo, writhe

Antonyms: aid, alleviate, assist, comfort, help, relieve

Main Entry: **suffer**

Part of Speech: *Verb*

Definition: Endure, permit

Synonyms: abide, accept, acquiesce, admit, allow, bear, bear with, bleed, bow, brave, brook, carry the torch, concede, countenance, encounter, experience, feel, go through, have, hurt, indulge, know, let, license, live with, put up with, receive, sanction, see, sit and take it, stand, stomach*, submit, support, sustain, swallow*, sweat*, take it, take*, tolerate, undergo, wait out, yield

Antonyms: Disallow, fight, refuse, reject

- = informal/non-formal usage

- The categories from Thesaurus.com for “*suffer*” per above are related to 2 categories: 1. Physical and bodily pain; and 2 Allow and permit.

D-1.CASE LAW DEFINING SUFFER

There are many cases which define the word suffer that are applicable to the phrase . A few of the latest cites are as follows:

ROSE v. HERIS, 305 S.W.3d 874 (Tex.App. [9th] 2010)

“Black's Law Dictionary (6th Ed.) defines "permit" as follows: [']**Permit**, v., to suffer, allow, consent, let; to give leave or license; to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act.['] Each of these concepts presupposes knowledge on the part of the person permitting a particular act. Even the failure to prevent is a form of acquiescence which, likewise, would require knowledge.”

STATE v. MUCHNICK, 334 S.W.2d 386 (Mo.App.St.L. 1960)

“In the case of *In re Thomas*, D.C., 103 F. 272, loc. cit. 274, the court, in considering the meaning of the word permit, said: "To permit' is defined as not to hinder. Webster defines 'permit' as more negative than 'allow'; that it imports only acquiescence or an abstinence from prevention, — while 'suffer' he defines as having an even stronger passive and negative sense than permit, and as implying sometimes mere indifference. It would seem, therefore, that to permit or suffer implies no affirmative act, — involves no intent. It is mere passivity, indifference, abstaining from preventive action.”

IN RE PERRY, (1972) 336 F. Supp. 420 United States District Court, D. South Carolina.

"To suffer an act to be done or a condition to exist is to permit or consent to it; to approve of it, and not to hinder it. It implies knowledge, a willingness of the mind and responsible control or ability to prevent. *Wilson v. Nelson*, 183 U.S. 191, 22 S.Ct. 74, 46 L.Ed. 147; *Selleck v. Selleck*, 19 Conn. 505; *Gregory v. U.S.C.C. N.Y.*, Fed.Case No. 5,803; 10 Fed.Case 1197; *In re Thomas*, D.C.Pa., 103 F. 272, 274; *Allison v. Commonwealth*, 221 Ky. 205, 298 S.W. 680."

FRANCE v. SOUTHERN EQUIPMENT CO., 34494 (W.Va. 11-24-2009)
689 S.E.2d 1

“Webster's International Dictionary, 2d ed., states that "suffer" as a verb means "to allow; to permit; not to forbid or hinder; also to tolerate; to put up with." The same authority defines the verb "permit" to mean "to allow the act or existence of; to consent to expressly or formally; to grant (one) license or liberty; to authorize; to give leave." . . . The words "suffer" and "permit" necessarily imply knowledge. *Nolde Bros., Inc. v. Chalkley*, 35 S.E.2d 827, 833 (Va. 1945).”

OSBORNE v. WINTER, 133 Cal.App. 664 (1933)

“[1] One of the meanings of the term "suffer to occur" is to allow, to admit, or to permit. (*Gregory v. Marks*, 10 Fed. Cas. 1194 [No. 5802]; *Adams v. Nichols*, 1 Aikens (Vt.), 316; *City of Ft. Wayne v. DeWitt*, 47 Ind. 391; *Dunseath v. Pittsburg A. & M.T. Co.*, 161 Pa. 124 [28 A. 1021].) It implies an approval of or acquiescence in an act, and more than nonresistance. (*Purinton v. Jamrock*, 195 Mass. 187 [80 N.E. 802, 18 L.R.A. (N.S.) 926].) And denotes knowledge and intention. (*Bunnell v. Commonwealth*, 30 Ky. Law Rep. 491 [99 S.W. 237].)”

The use of sister states cites are justified by the fact that 27 states and the District of Columbia and the Federal Courts have cited the phrase, “suffer, allow, cause, or permit”. These states are AL,AZ,AK,CA,DC,FL,GA,ID,IL,IN,IO,KA,KE,LA,MA, MO,NC,NV, NJ,NM,NY,OH,OR,PA, ,TE,TX,WA,WI.

The above cases are all in the ALLOW AND PERMIT category. The elements of importance is that in order to suffer one must have knowledge, must not hinder, no affirmative acts, not to forbid and have no intention to stop or prevent.

E. CONCLUSION

There are 2 main categories of “*suffer*”. 1. Physical and bodily pain; and 2 Allow and Permit. 30 TAC § 330.15(c) deals with inanimate MSW on inanimate land where this MSW is dumped. Physical pain is not inanimate. Therefore the pain categories are not applicable. 30 TAC § 330.15(c) does deal with the ALLOW and PERMIT category. Therefore the ALLOW and Permit categories are applicable.

Joabert did not know the “who, what, where or how” of any MSW which was dumped on its controlled property. Therefore the element of knowledge is not there in “suffer”.

Joabert blocked entrances and put up barriers to stop these illegal dumpers. Therefore, Joabert attempted to hinder the illegal dumpers.

Joabert placed signs of No Dumping on its property. Thus it performed affirmative acts, and forbid the illegal dumpers dumping on its property.

Joabert was not passive but aggressive in trying to stop illegal dumpers and by these actions showed its intention to stop or prevent.

F. PRAYER

WHEREFORE PREMISIS CONSIDERED, Joabert prays that the ALJ reverse his conclusion that Joabert suffered the dumping of MSW on its controlled property and revise your Proposal for Decision to have Joabert Development Company dismissed.

Respectfully submitted,



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g1entrail@yahoo.com

Certificate of Service

I certify that a copy of the above Motion was sent to on February 16,2011
Stephanie J. Frazee
Litigation Division, MC 175 P.O. Box 13087
Austin, Texas 78711-3087

sfrazee@tceq.state.tx.us



2 a: provided with ... by sucking the blood ... NL Suctoria + E -al]

uctoria + E -an] 1: a ... Tupi succupira, sapupira ... timber trees esp. of the family Leguminosae; succupira that resembles ... and in shipbuilding ...

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EXHIBIT A-1

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one of an ancient Germanic people ... tribes mentioned by Caesar as dwelling east of the Rhine ...

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enthusiasm - T.B. Macaulay ENOUGH, noun it modifies, as in men enough, no ...

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EXHIBIT B-4 ARGUMENT

The Code does not have the term "failing to prevent" as one of the causes of action opened to the ED for enforcement.

IV. ED'S DEFENSE

The ED states in their ED's response to Joabert's Motion to Dismiss, "'Fail to prevent" and "cause, suffer, allow, or permit" are synonymous. We disagree. Cause, Suffer, Allow and Permit are causes of action but each have a different degree of enforcement. They are quite different from failure to prevent.

V. DEFINITIONS OF TERMS FROM BLACKS LAW DICTIONARY 6TH ED *WEBSTER'S UNABRIDGED DICTIONARY*

Cause; To be the cause or reason occasion of; to effect as an agent ;bring about, to bring into existence ; to make to induce ; to compel.

Suffer: *AVILES v. AGUIRRE*, 292 S.W.3d 648 (Tex. 2009)

The current edition is simpler: "To all of you were when you are suffer or bring on oneself (a liability or expense)."BLACK'S LAW DICT. 782 (8th ed. 2004).

Allow: To sanction, either directly or indirectly, as opposed to merely suffering a thing to be done, to acquiesce in ; to suffer; to tolerate.

Permit: To give leave or license;

Prevent: *CLEMENT v. STATE*, 248 S.W.3d 791 (Tex.App. [2nd] 2008)
"Prevent" is similarly defined as "No hinder or impede." BLACK'S LAW'S DICTIONARY 1226 (8th ed. 2004).

VI. ENFORCEMENT

Cause; To enforce "cause" the ED must show that Joabert created the MSW or brought about the dumping of MSW.

dissolution. See Restatement (Second) of Conflict of Laws § 388 cmt. a (1971). [Cases: Corporations ↷ 619.]

EXHIBIT B-2

universal successor. 1. One who succeeds to all the rights and powers of a former owner, as with an intestate estate or an estate in bankruptcy. 2. *Louisiana law.* An heir or legatee who succeeds in the entire estate of the deceased or a specified portion of it, rather than by particular title as legatee of a specific thing. • A universal successor succeeds in all of the decedent's rights and charges, whereas the particular legatee succeeds only to the rights and charges pertaining to the bequeathed thing. La. Civ. Code art. 3506(28).

successor agent. See AGENT (2).

successor fiduciary. See FIDUCIARY.

successor guardian. See GUARDIAN.

successor in interest. (1832) One who follows another in ownership or control of property. • A successor in interest retains the same rights as the original owner, with no change in substance.

successor titulo lucrativo post contractum debitum (sək-ses-or [or-ər] tich-ə-loh loo-krə-ti-voh pohst kən-traktəm deb-i-təm). [Law Latin] *Hist.* A successor under a lucrative title after debt has been contracted. • Such a successor is liable to pay all debts contracted by the grantor.

successor trustee. See TRUSTEE (1).

sucesión legítima (soo-se-syon lay-hee-tee-mah). *Spanish law.* The process of regular inheritance, the rules of which may not be altered by will. See *Ortiz De Rodriguez v. Vivoni*, 201 U.S. 371, 376-77, 26 S.Ct. 475, 476 (1906).

such, adj. (bef. 12c) 1. Of this or that kind <she collects a variety of such things>. 2. That or those; having just been mentioned <a newly discovered Fabergé egg will be on auction next week; such egg is expected to sell for more than \$500,000>.

sudden-and-accidental pollution exclusion. See *pollution exclusion* under EXCLUSION (3).

sudden-death jurisdiction. *Wills & estates.* A jurisdiction in which a will once revoked cannot be revived, and instead must be reexecuted. See REVIVAL (2).

sudden-emergency doctrine. See EMERGENCY DOCTRINE (1).

sudden heat. See HEAT OF PASSION.

sudden heat and passion. See HEAT OF PASSION.

sudden heat of passion. See HEAT OF PASSION.

sudden-onset rule. (1981) The principle that medical testimony is unnecessary to prove causation of the obvious symptoms of an injury that immediately follows a known traumatic incident. [Cases: Damages ↷ 185(1).]

sudden passion. See HEAT OF PASSION.

sudden-peril doctrine. See EMERGENCY DOCTRINE (1).

sudden-peril rule. See EMERGENCY DOCTRINE (1).

sue, vb. To institute a lawsuit against (another party).

sue-and-labor clause. *Marine insurance.* A provision in property- and marine-insurance policies requiring the insured to protect damaged property against further loss. • The clause generally requires the insured to "sue and labor" to protect the insured party's interests. — Also termed *rescue clause*. [Cases: Insurance ↷ 2195, 2245(2).]

"Some insurance today is written against 'all risks' . . . Besides the perils clause . . . recovery under the policy can be had on the entirely separate 'sue and labor' clause . . . Under this clause, the underwriter may become liable for certain charges incurred by the assured in caring for the insured property, whether or not there is any actual loss or damage. Where sue-and-labor charges are incurred and loss also occurs, the underwriter may become liable for more than the policy amount, which limits only a claim for loss of or damage to the goods or vessel." Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 2-10, at 75 (2d ed. 1975).

sue facts. (1980) Facts that determine whether a party should bring a lawsuit; esp., facts determining whether a shareholder-derivative action should be instituted under state law.

sue out, vb. (15c) 1. To apply to a court for the issuance of (a court order or writ). 2. To serve (a complaint) on a defendant.

suerte (swer-tə). *Spanish law.* 1. Chance; destiny; fate. 2. A small plot of land. 3. Land within a municipality's boundaries, reserved for cultivating or planting because of its proximity to water. • This term appears in the caselaw of states that were formerly Spanish or Mexican possessions.

suffer, vb. (14c) 1. To experience or sustain physical or emotional pain, distress, or injury <suffer grievously><suffer damages>. [Cases: Damages ↷ 31, 57.1.] 2. To allow or permit (an act, etc.) <to suffer a default>.

sufferance (səf-ər-ənts or səf-rənts). (14c) 1. Toleration; passive consent. 2. The state of one who holds land without the owner's permission. See *tenancy at sufferance* under TENANCY. 3. A license implied from the omission to enforce a right.

sufferance wharves. *Hist. English law.* Wharves designated by the Commissioner of the Customs to receive goods before any duties must be paid.

sufferentia pacis (səf-ə-ren-shee-ə pay-sis), *n.* [Latin] A grant of peace; a truce; an armistice.

suffering a recovery. *Hist.* A conveyer's act of allowing, for the purposes of a conveyance, a fictitious action to be brought by the conveyee and a judgment to be recovered for the land in question.

sufficiency of disclosure. See ADEQUACY OF DISCLOSURE.

sufficiency-of-evidence test. (1972) *Criminal procedure.* 1. The guideline for a grand jury considering whether to indict a suspect: if all the evidence presented were uncontradicted and unexplained, it would warrant a

Va. 71, 97 S.E. 362, Public Service Com. 7 N.Y.S. 703, 705.

ch law. The whole that is, the lands of to send their grain

nt previous notice or g or occurring unes- prepared for. Hags- 42 P.2d 946, 949.

ulty or fight sudden, l agreement of two a v. Commonwealth, 26; Gibbons v. Com- W.2d 753.

IN. In the common r, this phrase means uddenly arising from

It means that the e time of the killing e result of a former st be directly caused f the provocation at tell v. State, Tex. Cr. tate, 29 Tex.App. 250, 24 Ky.Law Rep. 1730.

URY. Injury occur- aturally or in the ate v. District Court n. 131, 164 N.W. 533.

nder this rule, a fe- imary negligence is peril where the real negligence of the ap- peril from the stand-) excuse his primary ppearance of danger no time for delibera- Civ.App., 162 S.W.2d

ed by one bringing lue care, to avoid in- nsit Lines, 142 Neb.

The best; the seat of government, "of ussil," or "of ussil" city. Wharton.

ntinue legal proceed- to proceed with its proper business. Lervold v. R. Co., 43, 45 P.2d 100, includes a preced- udgment. Com- ty v. Lynch, 142

SUE OUT. To obtain by application; to petition for and take out. Properly the term is applied only to the obtaining and issuing of such process as is only accorded upon an application first made; but *conveniently* it is also used of the taking out of process which issues of course. The term is occasionally used of instruments other than writs. Thus, we speak of "suing out" a pardon. See *South Missouri Lumber Co. v. Wright*, 114 Mo. 326, 21 S.W. 811; *Kelley v. Vincent*, 8 Ohio St. 420; *U. S. v. American Lumber Co.*, 29 C.C.A. 431, 85 F. 830.

SUERTE. In Spanish law. A small lot of ground. Particularly, such a lot within the limits of a city or town used for cultivation or planting as a garden, vineyard or orchard. Building lots in towns and cities are called "solares." *Hart v. Burnett*, 15 Cal. 554.

SUFFER. To allow, to admit, or to permit. *Gregory v. Marks*, C.C.III., Fed.Cas.No.5,802; 10 Fed.Cas. 1194, 1198; *Osborne v. Winter*, 133 Cal. App. 664, 24 P.2d 892. It includes knowledge of what is to be done under sufferance. *First Nat. Bank & Trust Co. of Port Chester v. New York Title Ins. Co.*, 171 Misc. 854, 12 N.Y.S.2d 703, 709.

Also to have the feeling or sensation that arises from the action of something painful, distressing or the like; to feel or endure pain; to endure or undergo without sinking; to support; to bear up under; to be affected by; to sustain; to experience; to feel pain, physical or mental. The customary use of the word indicates some experience of conscious pain. *New York Life Ins. Co. v. Calhoun*, C.C.A.Mo., 97 F.2d 896, 898.

To suffer an act to be done or a condition to exist is to permit or consent to it; to approve of it, and not to hinder it. It implies knowledge, a willingness of the mind and responsible control or ability to prevent. *Wilson v. Nelson*, 183 U.S. 191, 22 S.Ct. 74, 46 L.Ed. 147; *Selleck v. Selleck*, 19 Conn. 505; *Gregory v. U. S.*, C.C.N.Y., Fed.Cas. No.5,803; 10 Fed.Cas. 1197; *In re Thomas*, D.C.Pa., 103 F. 77, 274; *Allison v. Commonwealth*, 221 Ky. 205, 298 S.W. 680.

SUFFERANCE. Toleration; negative permission by not forbidding; passive consent; license implied from the omission or neglect to enforce an adverse right. See *People on Inf. of Price v. Sheffield Farms-Slawson-Decker Co.*, 225 N.Y. 25, 121 N.E. 474, 476.

SUFFERANCE WHARVES. In English law. Wharves in which goods may be landed before any duty is paid. They are appointed for the purpose by the commissioners of the customs. 2 Steph. Comm. 500, note.

SUFFERENTIA PACIS. Lat. A grant or sufferance of peace or truce.

SUFFERING A RECOVERY. A recovery was effected by the party wishing to convey the land suffering a fictitious action to be brought against him by the party to whom the land was to be conveyed, (the demandant,) and allowing the demandant to recover a judgment against him for the land in question. The vendor, or conveying party, is thus assisting or permitting the demand-

ant so to recover a judgment against him, was then technically said to "suffer a recovery." *Brown*.

SUFFICIENT. Adequate, enough, as much as may be necessary, equal or fit for end proposed, and that which may be necessary to accomplish an object. *Brittain v. Industrial Commission of Ohio*, 95 Ohio St. 391, 115 N.E. 110; *Galveston, H. & S. A. Ry. Co. v. Enderle*, Tex.Civ.App., 170 S.W. 276, 277; *Commissioners of Sinking Fund of Louisville v. Anderson*, D.C.Ky., 20 F.Supp. 217, 220. Of such quality, number, force, or value as to serve a need or purpose. *Nissen v. Miller*, 44 N.M. 487, 105 P.2d 324, 326. As to sufficient "Consideration" see that title.

SUFFICIENT CAUSE. With respect to right to remove officers does not mean any cause which removing officer may deem sufficient, but means legal cause, specifically relating to and affecting administration of office, of substantial nature directly affecting public's rights and interests, touching officer's qualifications or his performance of duties, and showing that he is not fit or proper to hold office. *Sausbier v. Wheeler*, 252 App.Div. 267, 299 N.Y.S. 466, 472; *Zurich General Accident & Liability Ins. Co. v. Kinsler*, 12 Cal.2d 98, 81 P.2d 913, 915.

SUFFICIENT EVIDENCE. Adequate evidence; such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded; according to circumstances, it may be "prima facie" or "satisfactory" evidence, according to the definitions of those terms given above. *People v. Stern*, 33 Misc.Rep. 455, 68 N. Y.S. 732; *Mallery v. Young*, 94 Ga. 804, 22 S.E. 142; *Parker v. Overman*, 18 How. 141, 15 L.Ed. 318; *State v. Newton*, 33 Ark. 284.

Sufficient evidence is that which is satisfactory for the purpose; *Mallery v. Young*, 94 Ga. 804, 22 S.E. 142, 143; that amount of proof which ordinarily satisfies an unprejudiced mind, beyond a reasonable doubt; *Cole v. McClure*, 88 Ohio St. 1, 102 N.E. 264, 266. The term is not synonymous with "conclusive." *Pensacola & A. R. Co. v. State*, 5 So. 833, 835, 25 Fla. 310, 3 L.R.A. 661. But it may be used interchangeably with the term "weight of evidence." *Waldron v. New York Cent. Ry. Co.*, 106 Ohio St. 371, 140 N.E. 161, 163. See, also, Satisfactory Evidence.

SUFFOCATE. To kill by stopping respiration, as by strangling or asphyxiation. *Stone v. Physicians Casualty Ass'n of America*, 130 Neb. 769, 266 N.W. 605, 607.

SUFFRAGAN. Bishops who in former times were appointed to supply the place of others during their absence on embassies or other business were so termed. They were consecrated as other bishops were, and were anciently called "*chorepiscopi*," or "bishops of the county," in contradistinction to the regular bishops of the city or see. The practice of creating *suffragan* bishops, after having long been discontinued, was recently revived; and such bishops are now permanently "assistant" to the bishops. *Brown*.

A suffragan is a titular bishop ordained to aid and assist the bishop of the diocese in his spiritual function; or one who supplieeth the place instead of the bishop, by whose suffrage ecclesiastical causes or matters committed to him

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EXHIBIT C1

[Dictionary Home](#) » [Dictionary Definitions](#) » [suffer](#)

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suffer definition

suf·fer (suf'ər)

transitive verb

1. to undergo (something painful or unpleasant, as injury, grief, a loss, etc.); be afflicted with
2. to undergo or experience (any process, esp. change)
3. to allow; permit; tolerate
4. to bear up under; endure: now chiefly in negative constructions: *they could not suffer opposition*

Origin: ME *suffren* < Anglo-Fr *suffrir* < OFr *sofrir* < VL **sufferire*, for L *sufferre*, to undergo, endure < *sub-*, *sub-* + *ferre*, to bear

intransitive verb

1. to experience pain, harm, loss, a penalty, etc.
2. to be at a disadvantage: *my grades suffer by comparison with yours*
3. ARCHAIC to tolerate or endure evil, injury, etc.

Related Forms:

- **sufferer suf'·ferer** *noun*

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suf·fer (sŭf'ər)

verb *suf·fered*, **suffering** *suf·fer·ing*, *suf·fers*
verb, intransitive

1. To feel pain or distress; sustain loss, injury, harm, or punishment.
2. To tolerate or endure evil, injury, pain, or death. See Synonyms at [bear](#)¹.
3. To appear at a disadvantage: "*He suffers by comparison with his greater contemporary*" (Albert C. Baugh).

verb, transitive

suffer

EXHIBIT C-2

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Main Entry: **suffer**

Part of Speech: *verb*

Definition: be in pain

Synonyms: ache, agonize, ail, be affected, be at disadvantage, be convulsed, be handicapped, be impaired, be racked, be wounded, brave, complain of, deteriorate, droop, endure, experience, fall off, feel wretched, flag, get, go through, grieve, have a bad time, hurt, languish, pain, sicken, smart, undergo, writhe

Antonyms: aid, alleviate, assist, comfort, help, relieve

Main Entry: **suffer**

Part of Speech: *verb*

Definition: endure, permit

Synonyms: abide, accept, acquiesce, admit, allow, bear, bear with, bleed, bow, brave, brook, carry the torch, concede, countenance, encounter, experience, feel, go through, have, hurt, indulge, know, let, license, live with, put up with, receive, sanction, see, sit and take it, stand, stomach*, submit, support, sustain, swallow*, sweat*, take it, take*, tolerate, undergo, wait out, yield

Antonyms: disallow, fight, refuse, reject

* = informal/non-formal usage

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EXHIBIT C-3

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in-fliction (In-flɪk'ʃən)

1. The act or process of imposing or meting out something unpleasant.
2. Something, such as punishment, that is inflicted.

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Thesaurus

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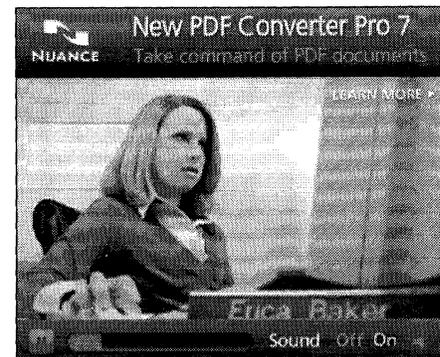
Noun 1. infliction - the act of imposing something (as a tax or an embargo)

- imposition**
 - enforcement** - the act of enforcing; ensuring observance of or obedience to
 - trade protection, protection** - the imposition of duties or quotas on imports in order to protect domestic industry against foreign competition; "he made trade protection a plank in the party platform"
 - regimentation** - the imposition of order or discipline
 - reimposition** - imposition again
 - taxation** - the imposition of taxes; the practice of the government in levying taxes on the subjects of a state
 - revenue enhancement, tax, taxation** - charge against a citizen's person or property or activity for the support of government
- 2. infliction** - an act causing pain or damage
 - actus reus, wrongful conduct, misconduct, wrongdoing** - activity that transgresses moral or civil law; "he denied any wrongdoing"
 - 3. infliction** - something or someone that causes trouble; a source of unhappiness; "washing dishes was a nuisance before we got a dish washer"; "a bit of a bother"; "he's not a friend, he's an infliction"
 - pain in the ass, pain in the neck, bother, botheration, annoyance, pain**
 - negative stimulus** - a stimulus with undesirable consequences
 - nuisance** - (law) a broad legal concept including anything that disturbs the reasonable use of your property or endangers life and health or is offensive
 - irritant, thorn** - something that causes irritation and annoyance; "he's a thorn in my flesh"
 - plague** - an annoyance; "those children are a damn plague"

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Charity ?

Feed a hungry child - donate to school feeding program

infliction

noun [imposition](#), [administration](#), [perpetration](#), [exaction](#) without the unnecessary or cruel infliction of pain

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Translations

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EXECUTIVE DIRECTOR OF THE § BEFORE THE STATE OFFICE
TEXAS COMMISSION ON §
ENVIRONMENTAL QUALITY, §
Petitioner §
VS. OF
JOABERT DEVELOPMENT COMPANY, ADMINISTRATIVE HEARINGS
Respondent

PROPOSAL FOR DECISION

SUGGESTIONS

PAGE 1 CHANGE DECISION TO

Based on the evidence presented at the hearing, the Administrative Law Judge (ALJ) finds that Joabert did not cause, suffer, allow or permit the dumping and disposal of MSW on property that Joabert controlled. Therefore, the ALJ recommends that the Commission dismiss all charges against Joabert.

PAGE 11 ALJ ANALYSIS TO

D. ALJ's Analysis Based on the evidence presented at the hearing, the Administrative Law Judge (ALJ) finds that Joabert did not cause, suffer, allow or permit the dumping and disposal of MSW on property that Joabert controlled.

The ALJ recommends that the Commission dismiss the charges against Joabert

11. Joabert did not cause, suffer allow or permit the unauthorized disposal of MSW on the property.
12. Eliminate all administrative penalty of \$1,070.00 in the report.

PROPOSED ORDER

13. Charges against Joabert Development company are Dismissed