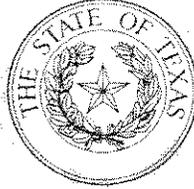


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 12, 2013

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

Re: **SOAH Docket No. 582-12-6882; TCEQ Docket No. 2012-0327-PST-E; In Re: Executive Director of The Texas Commission On Environmental Quality v.Caddell Stephenson**

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 **May 2, 2013**. Any replies to exceptions or briefs must be filed in the same manner no later than **May 13, 2013**.

This matter has been designated **TCEQ Docket No 2012-0327-PST-E; SOAH Docket No. 582-12-6882**. 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 "Lilo D. Pomerleau".

Lilo D. Pomerleau  
Administrative Law Judge

LDP:nl  
Enclosures  
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502  
Austin, Texas 78701  
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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)  
STYLE/CASE: CADDELL STEPHENSON  
SOAH DOCKET NUMBER: 582-12-6882  
REFERRING AGENCY CASE: 2012-0327-PST-E

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STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE  
ALJ LILO D. POMERLEAU

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REPRESENTATIVE / ADDRESS

PARTIES

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EXECUTIVE DIRECTOR

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CADDELL STEPHENSON

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SOAH DOCKET NO. 582-12-6882  
TCEQ DOCKET NO. 2012-0327-PST-E

EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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BEFORE THE STATE OFFICE

OF

v.

CADDELL STEPHENSON

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess an administrative penalty against and obtain corrective action from Caddell Stephenson for a violation of 30 Texas Administrative Code § 334.47(a)(2). Simply stated, the ED alleges that Mr. Stephenson failed to permanently remove underground storage tanks (USTs) from service or properly upgrade the USTs. Mr. Stephenson contends he does not own the property or the USTs. He quit selling gasoline in 1993 or 1994. He subsequently declared bankruptcy, failed to pay taxes on the property, and lost the property in a tax lien foreclosure.

The Administrative Law Judge (ALJ) finds that the ED established that Mr. Stephenson remains the legal property owner, and he violated Commission rules. The Commission should find that the violations occurred, assess Mr. Stephenson an administrative penalty of \$3,600, and order him to take corrective action.

**II. PROCEDURAL HISTORY AND JURISDICTION**

The hearing convened on December 6, 2012, before ALJ Lilo D. Pomerleau in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. The ED was represented by Steven M. Fishburn and Jennifer Cook, attorneys. Mr. Stephenson appeared by telephone on his own behalf. The record was held open to allow Mr. Stephenson to submit

additional financial documentation to the ED and to allow the parties time to file closing arguments. The record closed February 22, 2013. Mr. Stephenson does not contest notice or jurisdiction. These issues are addressed without further discussion in the proposed findings of fact and conclusions of law.

### III. APPLICABLE LAW

Beginning in December 1998, USTs for which installation began or was completed on or before December 22, 1988, had to be upgraded, improved, or replaced with equipment or components which met or exceeded specified requirements, including cathodic protection for steel tanks.<sup>1</sup> USTs not brought into timely compliance with the specified requirements must be permanently removed from service no later than 60 days after the prescribed implementation date.<sup>2</sup> The fee simple owner of the surface estate is presumed to own USTs located on the estate unless the fee simple owner demonstrates that someone else owns the USTs.<sup>3</sup> The Commission's rules at 30 Texas Administrative Code ch. 334 apply to the owner of the USTs.<sup>4</sup>

The Commission is authorized to assess an administrative penalty against a person who violates a provision of the Water Code within the Commission's jurisdiction, or a rule adopted or an order or permit issued thereunder.<sup>5</sup> The penalty may not exceed \$10,000 per day of violation of the applicable sections of the Water Code.<sup>6</sup> Additionally, the Commission may order the violator to take corrective action.<sup>7</sup>

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<sup>1</sup> 30 Tex. Admin. Code § 334.47(a)(1).

<sup>2</sup> 30 Tex. Admin. Code § 334.47(a)(2). The permanent removal from service must be conducted in accordance with the applicable provisions of 30 Tex. Admin. Code § 334.55.

<sup>3</sup> Water Code § 26.342(9) and 30 Tex. Admin. Code § 334.2(73).

<sup>4</sup> 30 Tex. Admin. Code § 334.1(b)(3).

<sup>5</sup> Water Code § 7.051.

<sup>6</sup> Water Code § 7.052(c).

<sup>7</sup> Water Code § 7.073.

#### IV. FACTS

Mr. Stephenson testified that he owned and used to run a gas station and small convenience store at the corner of Highway 59 and Todd Street, Timpson, Shelby County, Texas (Facility). According to an April 5, 1991 UST Registration form, Mr. Stephenson took ownership from Crawford Chevron on October 22, 1990.<sup>8</sup> There are four USTs that were used for gasoline and/or diesel and an oil tank on the property.<sup>9</sup> Mr. Stephenson quit selling gasoline in the early 1990s because he did not have the financial resources to comply with new environmental regulations, although he continued to operate the convenience store for about a year after he quit selling gasoline.

The TCEQ inspected the property on several occasions. On December 20, 2000, TCEQ investigator Larry Hagen inspected the Facility and found that Mr. Stephenson had not updated a required TCEQ registration form and failed to remove the USTs, which had been out of service for several years. The TCEQ Beaumont Regional Office sent Mr. Stephenson a notice of violation on February 9, 2001.<sup>10</sup> Ten years later, on February 9, 2011, TCEQ investigator Jeremy Quiros investigated the Facility. He also found that Mr. Stephenson had not removed the USTs. The Commission Staff issued a notice of violation on February 24, 2011.<sup>11</sup> On July 25, 2011, TCEQ investigator Esker Sawyer began a follow-up investigation of the Facility. He conducted a record review and on-site compliance investigation on December 1, 2011. He also found that the USTs had not been removed or upgraded. On December 20, 2011, the Commission issued a notice of enforcement letter.<sup>12</sup>

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<sup>8</sup> ED Ex. 5.

<sup>9</sup> According to the April 5, 1991 UST Registration form, the Facility has four gasoline and/or diesel tanks (two tanks with a capacity of 6,000 gallons, one tank with a capacity of 3,000 gallons, and one with a 4,000-gallon capacity). ED Ex. 5 at 2 and 4. However, an additional 250-gallon steel tank was registered with the TCEQ on May 8, 1986, and TCEQ investigator Larry Hagen confirmed the existence of this tank during an inspection. ED Ex. 2 at 2 and 43.

<sup>10</sup> ED Ex. 2 at 36.

<sup>11</sup> ED Ex. 1 at 23, 25.

<sup>12</sup> ED Ex. 2.

Mr. Sawyer testified that the USTs have a 19,250-gallon combined capacity and are approximately 28 years old. The tanks received gasoline and/or diesel fuel deliveries as late as 1996.<sup>13</sup> According to the TCEQ database, there is no documentation that the USTs are empty. When Mr. Sawyer inspected the property on October 11, 2011, he was unable to remove the caps to inspect the tanks. Because the tanks and piping are in contact with the soil and Mr. Stephenson has not installed any corrosion protection, Mr. Sawyer concluded that there is a potential for a release that could have a detrimental impact to human health and the environment, particularly groundwater resources.<sup>14</sup> Mr. Sawyer indicated that Mr. Stephenson must either upgrade or permanently remove the USTs in order to bring the system into compliance. He estimated that removal of the USTs could cost approximately \$9,000 to \$13,000. However, Mr. Sawyer noted that the cost would substantially increase if the contractor removing the equipment discovered contamination.

Mr. Stephenson filed for bankruptcy in 1992 and closed the convenience store. According to Mr. Stephenson, he lost the property to the mortgage company, Alaska Seaboard Partners, Ltd., and has not had any connection to the property or the Facility since 1997.<sup>15</sup> On September 1, 2009, Shelby County put the property up for sale for delinquent taxes.<sup>16</sup> However, the sale was canceled because the interested party did not show for the sale. At the hearing, Mr. Stephenson stated, "I don't think I own the place. I turned it back to MidStates Resources [the lender], then in 2009, Shelby County took it."<sup>17</sup> He stated that he does not have the deed or a title.

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<sup>13</sup> Ed Ex. 9.

<sup>14</sup> According to a UST Registration form dated April 5, 1991, the only form of corrosion protection is paint. ED Ex. 5 at 2.

<sup>15</sup> ED Ex. 2 at 45. In other letters to the TCEQ, Mr. Stephenson states that he and his wife, Gaye Stephenson, "closed our doors in 1994—We let it go back to finance Company, who that is now, we do not know." ED Ex. 2 at 55.

<sup>16</sup> Taxes were owed to the City of Timpson, the Timpson school district, and Shelby County.

<sup>17</sup> The lender originally appeared to be Midstates Resources of Omaha, Nebraska. The mortgage may have been sold to Alaska Seaboard, LP. Both entities are named in the Shelby County tax foreclosure suit. ED Ex. 2 at 5, 110.

Mr. Stephenson has consistently maintained he does not own the property. His response to the ED's Preliminary Report and Petition was as follows:

Dear Sir:

We have written you several times over the years to let you know that we have not had a business on said property since 1993. Due to the EPA we had to close the business. The owners of property at that time were Mid States Resources of Omaha, Nebraska, and now it is Alaska Seaboard Partners Limited Partnership.

There was a judgment against the property owners and us. I will send you another copy of the judgment that states judgment in favor of Shelby County. The judgment is in Rem only to us.

There is someone operating a business there, Leo Johnson, but he does not sell any petroleum. We do not have a deed to [the] property; we do not know who does other than the finance company.<sup>18</sup>

Although Mr. Stephenson believes he no longer owns the property and the Facility, Commission Staff submitted documentary evidence that he is still the legal owner:

- A certified copy of the deed for the property establishes that Mr. Stephenson is the grantee of the deed executed on October 31, 1990.<sup>19</sup>
- The Shelby County Appraisal District property record, as of February 9, 2011, indicates Mr. Stephenson is the owner.<sup>20</sup>

Additionally, Richard King, a legal assistant with Linebarger Goggan Blair & Sampson, LLP of Lufkin, Texas, testified that his firm handles tax foreclosure proceedings for Shelby County. Mr. King was familiar with the property at issue. After the bankruptcy proceeding, which closed September 25, 1997, ownership of the property remained in Mr. Stephenson's name. Mr. King testified that the property was set for sale in 2009 for delinquent taxes, but neither the interested buyer nor any other buyer appeared, and Shelby County canceled the sale.<sup>21</sup> Shelby County has

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<sup>18</sup> ED Ex. B.

<sup>19</sup> ED Ex. 4.

<sup>20</sup> ED Ex. 1 at 15.

<sup>21</sup> This is documented in a Sheriff's Return, Suit No. 99CV-26,215, which notes that the property was not put up for sale. ED Ex. 2 at 83.

not acted further on foreclosure because it does not want to be involved in expensive remediation.<sup>22</sup> Essentially, Mr. Stephenson still owns the property because no one else wants it.

Harvey Wilson, a TCEQ Enforcement Coordinator, testified concerning the appropriate penalty in this matter. According to Mr. Wilson, this violation is categorized as a major potential harm because contaminants could be leaking out from the USTs, which could impact human health or the environment. He based the penalty on two monthly events based on 64 violation days from December 1, 2011 (the date of Mr. Sawyer's investigative report), until February 3, 2012 (the screening date for the case), rounding down to two months. Mr. Wilson added an enhancement based on the February 24, 2011 notice of violation and calculated a \$5,250 penalty.<sup>23</sup> Mr. Wilson testified he properly calculated the penalty based on the Commission's penalty policy.

During the discovery phase of the hearing, Mr. Stephenson indicated that he did not have the ability to pay the administrative penalty. At the hearing, he clarified that he was "out of bankruptcy now but I'm still broke." The record was held open to allow Mr. Stephenson to supplement tax documentation that he had provided to the ED during discovery. The ED filed a status report on January 22, 2013, with a memorandum from Paige Seidenberger.<sup>24</sup> Based on the documents that Mr. Stephenson provided, Ms. Seidenberger recommends that Mr. Stephenson pay the minimum allowable penalty of \$3,600, payable over a 36-month period.

## V. ALJ'S DISCUSSION AND ANALYSIS

Mr. Stephenson does not contest the ED's allegation that the USTs have not been removed or upgraded as required by the Commission's rules. He does not contest the ED's penalty calculation. But Mr. Stephenson believes that he lost the property years ago when the county took it. However, because no entity completed any foreclosure sale or asserted its legal

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<sup>22</sup> See ED Ex. 2 at 2 (Mr. Sawyer relied on information that Mr. Quiros—a previous TCEQ investigator—provided concerning the property's ownership).

<sup>23</sup> ED Ex. 6; see ED 7 (TCEQ Penalty Policy).

<sup>24</sup> The ED's status report and attached memorandum are admitted into the record as ED Ex. 13.

right to ownership, Mr. Stephenson remains the legal owner.<sup>25</sup> As such, he is responsible for the Facility under the Commission's rules.<sup>26</sup>

The ALJ concludes that a penalty of \$3,600 is consistent with the factors in Water Code § 7.053 and with the Commission's 2002 Penalty Policy. The ALJ agrees with the ED that the risk to human health and environment from a potential release is best addressed by permanent removal of the USTs from service. Mr. Stephenson should be required to take the corrective action proposed by the ED to permanently remove the USTs from service.

**SIGNED April 12, 2013.**

  
\_\_\_\_\_  
**LILLO D. POMERLEAU**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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<sup>25</sup> Mr. Stephenson holds legal possession. He registered as an owner of a UST system and put forth no documentation that demonstrated otherwise. 30 Tex. Admin. Code § 334.2(73).

<sup>26</sup> Unless a UST system is exempted or excluded from regulation, TCEQ regulations apply to USTs that contain, contained, or will contain a regulated substance, which includes any petroleum substance. 30 Tex. Admin. Code §§ 334.1(b), 334.2(91).

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against and  
Requiring Corrective Action by  
Caddell Stephenson  
TCEQ DOCKET NO. 2012-0327-PST-E  
SOAH DOCKET NO. 582-12-6882**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and seeking corrective action from Caddell Stephenson (Respondent). Lilo D. Pomerleau, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a hearing on this matter on December 6, 2012, in Austin, Texas, and presented the Proposal for Decision. The following are parties to the proceeding: Respondent and the Commission's Executive Director (ED).

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. Caddell Stephenson (Respondent) owned and operated a gasoline station and convenience store on the corner of Highway 59 and Todd Street, Timpson, Shelby County, Texas (Facility).
2. Respondent purchased the Facility on October 22, 1990.
3. Four steel underground storage tanks and a steel oil tank (USTs) were installed in 1984. The tanks have a total capacity of 19,250 gallons. These USTs are subject to corrosion.
4. Respondent quit selling gasoline in the early 1990s.

5. Respondent filed for bankruptcy in 1992 and closed the convenience store located at the Facility.
6. The Facility lender and mortgage holder did not foreclose on the Facility and did not accept a surrender of the property.
7. After the bankruptcy proceeding, the ownership of the Facility remained in Respondent's name.
8. On September 1, 2009, Shelby County set the property for sale for delinquent taxes. However, no one sought to buy the property, and Shelby County canceled the sale.
9. The deed records in the Shelby County Clerk's Office list Respondent as the owner of record of the Facility.
10. On December 20, 2000, TCEQ investigator Larry Hagen inspected the Facility and found that Mr. Stephenson had not updated a required TCEQ registration form and failed to remove the USTs, which had been out of service for several years.
11. On February 9, 2011, TCEQ investigator Jeremy Quiros investigated the Facility. He also found that Mr. Stephenson had not removed the USTs. The ED issued a notice of violation on February 24, 2011.
12. On July 25, 2011, TCEQ investigator Esker Sawyer began a follow-up investigation of the Facility. He conducted a record review and on-site compliance investigation on December 1, 2011. He also found that the USTs had not been removed or upgraded.
13. On December 20, 2011, the Commission sent Respondent a notice of enforcement citing the alleged violation of failure to permanently remove the USTs or provide documentation for the technical upgrade requirements in accordance with 30 Texas Administrative Code § 334.47.
14. On March 22, 2012, the ED issued the EDPRP to Respondent in accordance with Texas Water Code § 7.054, alleging that Respondent violated 30 Texas Administrative Code § 334.47(a)(2) by failing to permanently remove the USTs from service.
15. The ED initially recommended the imposition of an administrative penalty in the total amount of \$5,250.00, and corrective action to bring the Facility into compliance.
16. On May 12, 2012, Respondent replied to the ED claiming that he no longer owns the property.
17. Respondent provided the ED with supplementary documentation concerning his ability to pay the recommended fine. The ED now recommends the minimum allowable penalty of \$3,600.

18. On July 14, 2012, the case was referred to SOAH for a contested case hearing.
19. On July 2, 2012, the Commission's Chief Clerk issued notice of the preliminary hearing to Respondent, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
20. At the preliminary hearing that was held on August 2, 2012, the ED established jurisdiction to proceed.
21. The hearing on the merits was conducted on December 6, 2012, in Austin, Texas, by ALJ Lilo D. Pomerleau.
22. The ED was represented by Steven M. Fishburn and Jennifer Cook, attorneys with the TCEQ Litigation Division. Respondent appeared on his own behalf by telephone.

## **II. CONCLUSIONS OF LAW**

1. Respondent is subject to the Commission's enforcement authority pursuant to Texas Water Code § 7.002.
2. Pursuant to Texas Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
3. Under Texas Water Code § 7.052, a penalty may not exceed \$10,000 per violation, per day, for the violation at issue in this case.
4. Pursuant to Texas Water Code § 7.073, the Commission may order Respondent to take corrective action.
5. Respondent is responsible for compliance with the rules of TCEQ. 30 Tex. Admin. Code §§ 334.1(b)(3) and 334.2(73).
6. As required by Texas Water Code § 7.055 and 30 Texas Administrative Code §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, the penalties, and the corrective actions proposed therein.
7. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Texas Water Code § 7.058; 1 Texas Administrative Code § 155.27; and 30 Texas Administrative Code §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violation and the proposed penalty.

8. 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. Tex. Gov't Code ch. 2003.
9. Based on the above Findings of Fact, Respondent violated 30 Texas Administrative Code § 334.47(a)(2).
10. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors including:
  - The violation's 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.
11. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
12. Based on consideration of the above Findings of Fact, the factors set out in Texas Water Code § 7.053, and the Commission's Penalty Policy, a total administrative penalty of \$3,600, is justified and should be assessed against Respondent.
13. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the ED recommends, which are set out below in the Order.

**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. Caddell Stephenson (Respondent) is assessed an administrative penalty in the amount of \$3,600 for violation of 30 Texas Administrative Code § 334.7(a)(2). 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: Caddell Stephenson; TCEQ Docket No. 2012-0327-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

2. Within 30 days after the effective date of the Commission Order, Respondent shall permanently remove the UST system from service, in accordance with 30 Texas Administrative Code § 334.55.
3. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2. 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 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:

Ronald Herbert, Waste Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1830.

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

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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