

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 24, 2014

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

Re: **SOAH Docket No. 582-14-0625; TCEQ Docket No.2013-1030-MLM-E; In Re:
Executive Director of the Texas Commission on Environmental Quality v. David
Wise, Administrator of the Estate of Bennie Byley; and Pamela Sue Sanderson**

Dear Ms. Isdal:

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 July 14, 2014. Any replies to exceptions or briefs must be filed in the same manner no later than July 24, 2014.

This matter has been designated **TCEQ Docket No. 2013-1030-MLM-E; SOAH Docket No. 582-14-0625**. 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 that reads "William G. Newchurch".

William G. Newchurch
Administrative Law Judge

WGN/Ls
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: DAVID WISE, ADMINISTRATOR OF THE ESTATE OF BENNIE BYLEY
SOAH DOCKET NUMBER: 582-14-0625
REFERRING AGENCY CASE: 2013-1030-MLM-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH**

REPRESENTATIVE / ADDRESS

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BENNIE JOE BYLEY

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VIRGINIA LYNN GALLOWAY

PAMELA SUE SANDERSON
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PAMELA SUE SANDERSON

SOAH DOCKET NO. 582-14-0625
TCEQ DOCKET NO. 2013-1030-MLM-E

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE STATE OFFICE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY	§	
	§	
v.	§	OF
	§	
DAVID WISE, ADMINISTRATOR OF	§	
THE ESTATE OF BENNIE BYLEY;	§	
AND PAMELA SUE SANDERSON,	§	
RESPONDENTS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Respondents in this case are David Wise, as administrator of the estate of Bennie Byley (Estate), and Pamela Sue Sanderson. The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that the Respondents failed to prevent the unauthorized storage, disposal, and discharge of solid waste into or adjacent to water in the state, in violation of Texas Water Code § 26.121 and 30 Texas Administrative Code §§ 330.7(a) and 335.2(a). The ED recommends assessing the Respondents an administrative penalty of \$7,875 and ordering them to take corrective action for the violations.¹

The Estate and Ms. Sanderson do not dispute the occurrence of the violations, their liability for them, the need for the proposed corrective action, or the penalty calculation. However, they contend that the Estate lacks sufficient financial resources to pay the penalty and take the corrective action. For that reason, they ask the Commission not to order the Estate to pay the penalty and take the corrective action.

¹ ED Ex. A at 4 & attach. A at 1.

The Administrative Law Judge (ALJ) recommends that the Commission find that the Respondents committed the alleged violations and order them to pay the penalty and take the corrective action proposed by the ED.

II. JURISDICTION

Jurisdiction is not contested. The proposed order contains the necessary findings of facts and conclusions of law concerning jurisdiction.

III. BACKGROUND

The Estate owns property at 11906 Schafer Road in Schertz, Bexar County, Texas (Site). The Site was once owned by Bennie and Mattie Byley.² Subsequently, Bennie Byley became the sole owner of the Site and later died on November 15, 2009.³ Pamela Sue Sanderson, Bennie Joe Byley, and Virginia Lynn Galloway (Byley heirs) are Bennie Byley's children and only heirs.⁴

Bennie Joe Byley and Virginia Lynn Galloway were previously respondents in the case. They were properly notified but failed to appear for the hearing. The ED moved that the allegations against them be severed and remanded to the Commission for entry of a default order. The ALJ granted that motion on June 2, 2014.⁵

The Estate remains in probate before Bexar County Probate Court No. 2 (Court). Due to disagreements among the Byley heirs concerning administration of the Estate, the Court

² ED Ex. 1 at 28.

³ Audio at 01:57.

⁴ ED Ex. 4.

⁵ Order No. 5.

appointed Mr. Wise as the Estate's dependent administrator on January 24, 2011, and he reports only to the Court.⁶

During investigations of the Site from October 12, 2012, to April 8, 2013, a TCEQ investigator found more than fifty 55-gallon drums, two intermediate bulk containers, and numerous smaller containers of miscellaneous chemicals abandoned and in various states of deterioration at the Site. Additionally, two areas of spilled oily liquid were at the Site.⁷ After Mr. Wise was appointed administrator, he found all of this material at the Site.⁸

The Respondents do not dispute⁹ that the material at the Site is waste and industrial waste, as defined by the Texas Water Code,¹⁰ and solid waste and industrial solid waste, as defined by the Solid Waste Disposal Act¹¹ and the Commission's rules.¹²

IV. VIOLATIONS

Texas Water Code § 26.121 prohibits the discharge of industrial waste into or adjacent to any water in the state without the Commission's authorization.¹³ It also prohibits any person's causing, suffering, allowing, or permitting the discharge of any waste in violation of Texas Water Code chapter 26.¹⁴ Using slightly different language, 30 Texas Administrative Code §§ 330.7(a) and 335.2 contain those same prohibitions.

⁶ Audio at 03:05-03:06; Estate Ex. 2 at 1.

⁷ ED Exs. 1, 2, & 3.

⁸ Audio at 03:07-03:09.

⁹ Audio at 01:12.

¹⁰ Tex. Water Code § 26.001(6), (11).

¹¹ Tex. Health & Safety Code § 361.003(16), (35).

¹² 30 Tex. Admin. Code § 330.3(66), (145).

¹³ Tex. Water Code § 26.121(a)(1).

¹⁴ Tex. Water Code § 26.121(c).

Regardless of how the waste may have come to the Site, the ED argues that the Respondents violated the above provisions because as owners they suffered and allowed the discharge of the waste at the Site without authorization from the Commission. The Respondents do not dispute that the violations occurred as alleged and that they are liable for the violations.¹⁵

V. CORRECTIVE ACTION

If a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action.¹⁶ The Commission has already spent approximately \$17,000 for contractors to relocate the waste within the boundaries of the Site so as to stabilize the situation.¹⁷ However, further corrective action is needed. The ED proposes that the Commission order the Respondents to immediately cease accepting and disposing of any additional unauthorized waste, remove all unauthorized waste, and properly dispose of it at an authorized facility within 30 days. He also recommends that the Respondents be ordered to comply with other requirements set out in the Proposed Order.

The Respondents do not object to the necessity of the proposed corrective actions. However, they contend that the Estate does not have the resources to pay to have the waste removed and the Site cleaned. For that reason, they believe the Estate should not be ordered to take corrective action.¹⁸

¹⁵ Audio at 00:58-01:03, 01:13-01:14, & 01:27-01:29.

¹⁶ Tex. Water Code § 7.073(2).

¹⁷ Audio at 01:21-01:22.

¹⁸ Audio at 01:38-01:45.

VI. PENALTIES

The Commission may assess a penalty of up to \$25,000 a day for each violation proven in this case.¹⁹ The ED calculated the proposed \$7,875 penalty in accordance with the Commission's Penalty Policy, which took effect on September 1, 2011.²⁰ Although three laws were violated for 47 days, the ED treated that as a single violation and calculated a penalty as if there were two violation events. He categorized the violation as an actual release by a minor source that caused moderate harm, which resulted in a \$7,500 base penalty. The ED increased the base penalty by 5%, or \$375, due to the Respondents' compliance history. They previously received a notice of violation for a similar violation.²¹

The Respondents agree that the proposed \$7,875 penalty was properly calculated in accordance with applicable law and the Commission's Penalty Policy.²² However, they argue that the Estate does not have the financial ability to pay the penalty. They contend that justice requires that the penalty be lower.

VII. ABILITY TO PAY

A. Burden of Proof

If any respondent asserts an inability to pay a recommended penalty, that party shall have the burden of establishing that a lesser penalty is justified under that party's financial circumstances. A party asserting an inability to pay must produce all financial records that would be potentially relevant to that issue within 30 days of raising that claim, but no later

¹⁹ Tex. Water Code § 7.052.

²⁰ ED Ex. 6.

²¹ ED Ex. 7.

²² Audio at 01:32-01:34.

than 30 days before the specified date for hearing without leave from the ALJ. The failure of the party raising such a claim to provide all potentially relevant financial records within these timeframes discussed in this subsection shall constitute a waiver of the claim.²³ The Commission has also adopted a financial review policy for administrative penalty inability to pay claims.²⁴

The ED requested documentation from the Respondents that might have shown that they did not have the ability to pay the penalty. Tax returns, financial statements, a schedule of indebtedness, bank and other financial account statements, and numerous other documents were requested.²⁵

B. Ms. Sanderson's Ability to Pay

Ms. Sanderson did not provide any evidence concerning her ability to pay the penalty. Given that, the ALJ concludes Ms. Sanderson should be assessed the full penalty amount proposed by the ED.

C. Estate's Ability to Pay

The Estate contends that it could not provide the types of documents requested and normally required to support an inability to pay claim because most of them do not exist. The ALJ concludes some of the requested documents do not exist, thus it was not possible for the Estate to provide them. Because the Estate cannot do the impossible, the ALJ finds that it would be unjust and unreasonable to hold that the Estate waived its inability to pay argument by not providing all of the normally required documentation.

²³ 30 Tex. Admin. Code § 70.8.

²⁴ ED Ex. 9.

²⁵ ED Exs. 10 & 11.

Paige Seidenberger, a TCEQ financial analyst, reviewed the financial information that the Estate provided. In the absence of more information concerning the Estate's finances, she could not analyze the Estate's ability to pay the penalty and take corrective action.²⁶

In his capacity as Estate administrator, Mr. Wise is one of the Respondents. But in that same capacity he is legally and ethically obliged to search for estate assets and report them to the Court. That makes Mr. Wise more neutral and presumptively trustworthy witness than a typical witness. Moreover, the ALJ found Mr. Wise personally very credible when he testified. His testimony was rational, thorough, and responsive.

Mr. Wise testified that the Court appointed him as the Estate's administrator due to bitter disagreements among the Byley heirs over the Estate. Some heirs have sued other heirs and claimed they were hiding assets of the Estate. Mr. Wise interviewed the Byley heirs, but found nothing to support the allegations that the Estate had assets beyond those discussed below. Mr. Wise believes that he did all that he reasonably could to discover Estate assets.²⁷

Mr. Wise diligently searched and found only two physical assets that the Estate owns: the Site where waste is located and a 1.406-acre residential property with easements for ingress, egress, and a waterline in Schertz, Bexar County, Texas. He tried but was not able to sell either property. An environmental consultant informally and preliminarily estimated that it would cost \$20,000 to \$30,000 to remediate the Site. The residential property contains a dilapidated structure and trailers, which Mr. Wise believes would need to be removed to sell the property. The Internal Revenue Service has placed a lien on the Site, and there are legal problems with the Estate's title to the residential property. An abstract of judgment for \$1,000 has been filed on both properties.²⁸

²⁶ Audio at 02:39-02:53.

²⁷ Audio at 03:28-03:33.

²⁸ Estate Ex. 2; Audio at 03:08-03:14, 03:28-03:33.

The Estate's only financial assets are funds that Mr. Wise holds in his trust account. He received two deposits: one from a former tenant of the Site and one from the prior administrator of the Estate. He made one withdrawal to pay for the grass at the Site to be cut and related cleanup. That leaves a balance of \$3,310.85. The Estate has no bank or other types of financial-asset accounts that Mr. Wise has been able to locate.²⁹ The Estate owes Mr. Wise over \$9,600 in attorney's fees for his work as administrator.³⁰

The ALJ concludes that the Estate's debts exceed the value of its liquid assets, and the Estate's real estate assets, including the Site, have no market value at this time. Accordingly, the ALJ concludes that the Estate has no current ability to pay an administrative penalty or take corrective action.

Despite the Estate's current inability to pay, the ALJ does not find that justice requires that no penalty be assessed against the Estate. As set out above, Ms. Sanderson is personally liable for the alleged violations and should be assessed the proposed penalty. Bennie Joe Byley and Virginia Lynn Galloway did not appear for hearing, and the ALJ remanded the case to the Commission for entry of a default order assessing them a penalty. Releasing the Estate from the obligation to pay the penalty could indirectly benefit the Byley heirs if the Estate's assets ever regain value and are sold. The ALJ sees no justice in that outcome.

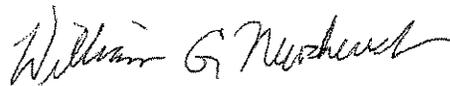
²⁹ Audio at 03:28-03:31.

³⁰ Estate Ex. 1.

VIII. RECOMMENDATION

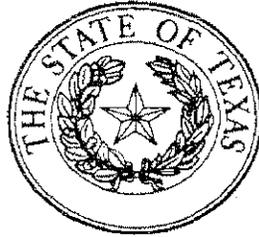
The ALJ recommends that the Commission issue the attached proposed order, find that the Estate and Ms. Sanderson committed the alleged violations, and order them to take corrective action and pay an administrative penalty of \$7,875 for the violations.

SIGNED June 24, 2014.



**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST
AND ORDERING CORRECTIVE ACTION BY
DAVID WISE, ADMINISTRATOR OF THE ESTATE OF BENNIE BYLEY;
AND PAMELA SUE SANDERSON;
TCEQ DOCKET NO. 2013-1030-MLM-E;
SOAH DOCKET NO. 582-14-0625**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Preliminary Report and Petition (EDFAPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by David Wise, as administrator of the Estate of Bennie Byley, and Pamela Sue Sanderson (Respondents). A Proposal for Decision (PFD) was presented by William G. Newchurch, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the EDFAPRP on May 2, 2014, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. The Estate of Bennie Byley (Estate) owns property at 11906 Schafer Road in Schertz, Bexar County, Texas (Site).
2. The Site was once owned by Bennie and Mattie Byley.

3. Subsequently, Bennie Byley became the sole owner of the Site and later died on November 15, 2009.
4. Pamela Sue Sanderson, Bennie Joe Byley, and Virginia Lynn Galloway (Byley heirs) are Bennie Byley's children and only heirs.
5. The Estate remains in probate before Bexar County Probate Court No. 2 (Court).
6. On January 24, 2011, due to disagreements among the Byley heirs concerning administration of the Estate, the Court appointed David Wise as the Estate's dependent administrator. Mr. Wise reports only to the Court.
7. During investigations of the Site from October 12, 2012, to April 8, 2013, a TCEQ investigator found more than fifty 55-gallon drums, two intermediate bulk containers, and numerous smaller containers of miscellaneous chemicals abandoned and in various states of deterioration at the Site. Additionally, two areas of spilled oily liquid were at the Site.
8. After Mr. Wise was appointed administrator, he found the above material at the Site.
9. The above material remains at the Site.
10. On July 16, 2013, the Commission's Executive Director (ED) filed an Executive Director's Preliminary Report and Petition (EDPRP) alleging that Mr. Wise, as the Estate's administrator, failed to prevent the unauthorized disposal and discharge of industrial solid waste at the Site into or adjacent to water in the state, in violation of Texas Water Code § 26.121 and 30 Texas Administrative Code §§ 330.4. The ED recommended assessing the Estate an administrative penalty of \$7,875 and ordering it to take corrective action for the violations.
11. On September 4, 2013, Mr. Wise, as administrator of the Estate, filed an answer to the EDPRP generally denying the allegations and opposing the proposed relief.
12. On October 11, 2013, the ED requested the TCEQ's Chief Clerk to refer this matter to SOAH for hearing, and the Chief Clerk referred it on October 17, 2013.
13. On October 21, 2013, the Chief Clerk issued a notice of hearing and mailed it to Mr. Wise.
14. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
15. On November 21, 2013, the ED filed an agreed motion to waive the preliminary hearing, admit exhibits to show jurisdiction, and set a case schedule on which the parties agreed. The ALJ granted the motion.

16. On March 5, 2014, the ED filed the EDFAPRP alleging that the Estate and the Byley heirs failed to prevent the unauthorized storage, disposal, and discharge of solid waste at the Site into or adjacent to water in the state, in violation of Texas Water Code § 26.121 and 30 Texas Administrative Code §§ 330.7(a) and 335.2(a). The ED recommended assessing them an administrative penalty of \$7,875 and ordering them to take corrective action for the violations.
17. The ED calculated the proposed \$7,875 penalty in accordance with the Commission's Penalty Policy, which took effect on September 1, 2011.
18. On March 18, 2014, the ALJ continued the hearing to May 2, 2014, and each party was served with a copy of the continuance order.
19. On May 2, 2014, the ALJ convened the hearing on the merits, which the ED, Mr. Wise, and Ms. Sanderson attended. The hearing was concluded and the record was closed that same day.
20. Bennie Joe Byley and Virginia Lynn Galloway were properly notified of the hearing, but failed to attend. The ED moved that the allegations against them be severed and remanded to the Commission for entry of a default order. The ALJ granted that motion on June 2, 2014.

II. CONCLUSIONS OF LAW

1. The Commission may assess an administrative penalty against any person who violates the provision of the Texas Water Code and the Commission rules that the ED alleges the Respondents violated. Tex. Water Code § 7.051.
2. The penalty may not exceed \$25,000 a day for each violation. Tex. Water Code § 7.052(c).
3. The Commission must consider certain factors in determining the amount of the penalty. Tex. Water Code § 7.053.
4. The Commission may also order a violator to take corrective action. Tex. Water Code § 7.073(2).
5. The material at the Site is waste and industrial waste, as defined by the Texas Water Code, and solid waste and industrial solid waste, as defined by the Solid Waste Disposal Act and the Commission's rules. Tex. Water Code § 26.001(6), (11); Tex. Health & Safety Code § 361.003(16), (35); 30 Tex. Admin. Code § 330.3(66), (145).
6. No person may discharge industrial waste into or adjacent to any water in the state without the Commission's authorization, and no person may cause, suffer, allow, or

permit the discharge of any waste in violation of Texas Water Code chapter 26. Tex. Water Code § 26.121(a)(1), (c).

7. Using slightly different language, 30 Texas Administrative Code §§ 330.7(a) and 335.2 contain those same prohibitions.
8. As set out in the Findings of Fact, Mr. Wise, as administrator of the Estate, and Ms. Sanderson violated Texas Water Code § 26.121(a)(1) and (c) and 30 Texas Administrative Code §§ 330.7(a) and 335.2.
9. Mr. Wise, as administrator of the Estate, and Ms. Sanderson should be assessed an administrative penalty of \$7,875 for the above violations.
10. Mr. Wise, as administrator of the Estate, and Ms. Sanderson should be ordered to take the corrective action set out below, as previously proposed in the EDFAPRP.

III. ORDERING PROVISIONS

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

1. Within 30 days after the effective date of this Commission Order, David Wise, as administrator of the Estate, and Pamela Sue Sanderson shall pay an administrative penalty in the amount of \$7,875 for violations of Texas Water Code § 26.121 and 30 Texas Administrative Code §§ 330.7(a) and 335.2(a).
2. The payment of this administrative penalty and the performance of all corrective action listed herein will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
3. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: David Wise, administrator of the Estate of Bennie Byley, and Pamela Sue Sanderson, TCEQ Docket No. 2013-1030-MLM-E," to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

4. Immediately upon the effective date of this order, Mr. Wise, as administrator of the Estate, and Pamela Sue Sanderson shall cease accepting and disposing of any additional unauthorized waste at the Site.

5. Within 30 days after the effective date of this order, Mr. Wise, as administrator of the Estate, and Ms. Sanderson shall remove all unauthorized waste from the Site and properly dispose of it at an authorized facility.
6. Within 90 days after the effective date of this order, Mr. Wise, as administrator of the Estate, and Ms. Sanderson shall conduct an Affected Property Assessment and shall submit an Affected Property Assessment Report, pursuant to 30 Texas Administrative Code § 350.91, to the ED for approval. If response actions are necessary, Mr. Wise, as administrator of the Estate, and Ms. Sanderson shall comply with all applicable requirements of the Texas Risk Reduction Program found in 30 Texas Administrative Code ch. 350, which may include plans, reports, and notices under subchapter E (30 Texas Administrative Code §§ 350.92–350.96); financial assurance (30 Texas Administrative Code § 350.33(I)); and institutional controls under Subchapter F (in accordance with 30 Texas Administrative Code § 350.111).
7. Within 105 days after the effective date of this order, Mr. Wise, as administrator of the Estate, and Pamela Sue Sanderson shall submit written certification to demonstrate compliance with Ordering Provisions 4 through 6. The certification required shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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.”

8. Mr. Wise, as administrator of the Estate, and Ms. Sanderson shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Cameron Lopez, Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

9. 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 the Respondents if the ED determines that the Respondents have not complied with one or more of the terms or conditions in this Order.
10. 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.
11. 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.
12. The Commission's Chief Clerk shall forward a copy of this Order to each party.
13. 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, Ph.D., P.E., Chairman
For the Commission