

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46896
Bennie Joe Byley and Virginia Lynn Galloway
RN106531742
Docket No. 2013-1030-MLM-E

Order Type:

Default Order (SOAH evidentiary hearing)

Media:

MLM: Solid Waste and Water Quality

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

11906 Schaefer Road, Schertz, Bexar County

Type of Operation:

unauthorized solid waste storage and/or disposal site

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: The other two respondents in this case (David Wise, Administrator of the Estate of Bennie Byley, and Pamela Sue Sanderson) appeared at the evidentiary hearing. Bennie Joe Byley and Virginia Lynn Galloway failed to appear and the case against them was severed and remanded for a default order. The ALJ's Proposal for Decision and Proposed Order regarding the two remaining respondents was adopted by the Commission on September 10, 2014.

Interested Third-Parties: David Wise, Administrator of the Estate of Bennie Byley;
Pamela Sue Sanderson

Texas Register Publication Date: September 26, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$7,875

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$7,875

Compliance History Classifications:

Person/CN –Not Applicable (Both Respondents)

Site/RN – Not Applicable

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Bennie Joe Byley and Virginia Lynn Galloway

RN106531742

Docket No. 2013-1030-MLM-E

Investigation Information

Complaint Date(s): October 12, 2012
Complaint Information: Alleged numerous containers possibly containing hazardous materials on the property.

Date(s) of Investigation: October 12, 2012; March 19, 2013; April 5, 2013; April 8, 2013

Date(s) of NOV(s): October 18, 2012

Date(s) of NOE(s): April 15, 2013

Violation Information

Failed to prevent the unauthorized storage and/or disposal and unauthorized discharge of solid waste into or adjacent to water in the state (approx. fifty 55-gallon drums, two intermediate bulk containers, and numerous smaller containers of miscellaneous chemicals were observed abandoned in various states of deterioration, and two areas of spilled oily liquid were observed) [TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE §§ 330.7(a) and 335.2(a)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Immediately, cease accepting and disposing of any additional unauthorized waste at the Site.
2. Within 30 days, remove all unauthorized waste from the Site and properly dispose of it at an authorized facility.
3. Within 90 days, conduct an Affected Property Assessment and submit an Affected Property Assessment Report. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction program, which may include plans, reports, notices, financial assurance, and institutional controls.
4. Within 105 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: July 16, 2013 (EDPRP); March 5, 2014 (EDFARP);
March 13, 2014 (refiled EDFARP)

Date Green Card(s) Signed: July 22, 2013 (David Wise); March 11, 2014 (Virginia Lynn Galloway);
March 15, 2014 (Bennie Joe Byley)

Date Answer(s) Filed: September 4, 2013

SOAH Referral Date: October 17, 2013

Hearing Date(s):
Preliminary hearing: November 21, 2013 (waived)
Evidentiary hearing: May 2, 2014 (defaulted)

Contact Information

TCEQ Attorneys: Elizabeth Lieberknecht, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Remington Burklund, Enforcement Division, (512) 239-2611

TCEQ Regional Contact: Carmen Lopez, San Antonio Regional Office, (210) 490-3069

Respondent Contact: Bennie Joe Byley, 6219 East Texas Street, Lot 89, Bossier City, Louisiana 71111;
Virginia Lynn Galloway, 612 Doreen Place, Newport News, Virginia 23608

Respondents' Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	25-Apr-2013		
	PCW	28-Feb-2014	Screening	21-May-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Bennie Joe Byley and Virginia Lynn Galloway
Reg. Ent. Ref. No.	RN106531742
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46896	No. of Violations	1
Docket No.	2013-1030-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Remington Burklund
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$375

Notes	Enhancement for one NOV with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$1,068	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$10,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
Reduces or enhances the Final Subtotal by the indicated percentage.			

Notes	
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Final Penalty Amount	\$7,875
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,875
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction)				

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$7,875
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Screening Date 21-May-2013

Docket No. 2013-1030-MLM-E

PCW

Respondent

Bennie Joe Byley and Virginia Lynn Galloway

Policy Revision 3 (September 2011)

Case ID No. 46896

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106531742

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Remington Burkland

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> **Repeat Violator (Subtotal 3)**

N/A

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 5%

Screening Date 21-May-2013

Docket No. 2013-1030-MLM-E

PCW

Respondent

Bennie Joe Byley and Virginia Lynn Galloway

Policy Revision 3 (September 2011)

Case ID No.

46896

PCW Revision August 3, 2011

Reg. Ent. Reference No.

RN106531742

Media [Statute]

Industrial and Hazardous Waste

Enf. Coordinator

Remington Burklund

Violation Number

1

Rule Cite(s)

Tex. Water Code § 26.121 and 30 Tex. Admin. Code §§ 330.7(a) and 335.2(a)

Violation Description

Failed to prevent the unauthorized storage and/or disposal and unauthorized discharge of solid waste into or adjacent to water in the state. Specifically, over fifty 55-gallon drums, two intermediate bulk containers, and numerous smaller containers of miscellaneous chemicals were observed abandoned in various states of deterioration at the Site. Additionally, there were two areas at the Site where spilled oily liquid was observed.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2

47 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,500

Two monthly events are recommended from the final date of the investigation (April 8, 2013) to the screening date (May 21, 2013).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
	Extraordinary	
Ordinary		
N/A	x	(mark with x)

Notes

The Respondents does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,068

Violation Final Penalty Total \$7,875

This violation Final Assessed Penalty (adjusted for limits) \$7,875

Economic Benefit Worksheet

Respondent Bennie Joe Byley and Virginia Lynn Galloway
Case ID No. 46896
Reg. Ent. Reference No. RN106531742
Media Industrial and Hazardous Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	12-Oct-2012	1-Dec-2014	2.14	\$1,068	n/a	\$1,068

Notes for DELAYED costs Estimated cost to submit an Affected Property Assessment Report for the site and conduct the clean-up. The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$10,000	TOTAL	\$1,068
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Compliance History Report

PUBLISHED Compliance History Report for CN604533687, RN106531742, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604533687, Bennie Joe Byley **Classification:** NOT APPLICABLE **Rating:** N/A
Regulated Entity: RN106531742, 11906 SCHAEFER RD **Classification:** NOT APPLICABLE **Rating:** N/A
Complexity Points: N/A **Repeat Violator:** N/A
CH Group: 14 - Other
Location: 11906 SCHAEFER RD SCHERTZ, TX 78108-4018, BEXAR COUNTY
TCEQ Region: REGION 13 - SAN ANTONIO
ID Number(s): **INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED** ID NUMBER R13106531742
INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED EPA ID TXR000081397
INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED ID NUMBER F2135

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: March 10, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 20, 2008 to May 20, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Remington Burklund

Phone: (512) 239-2611

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 10/18/2012 (1040978)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 335, SubChapter A 335.4

TWC Chapter 26 26.121

Description: Failure to prevent the discharge of industrial solid waste or municipal hazardous waste into or adjacent to waters in the state without obtaining authorization.

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

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Compliance History Report

PUBLISHED Compliance History Report for CN604533695, RN106531742, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604533695, Virginia Lynn Galloway **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN106531742, 11906 SCHAEFER RD **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 11906 SCHAEFER RD SCHERTZ, TX 78108-4018, BEXAR COUNTY

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s): **INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED** ID NUMBER R13106531742
INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED EPA ID TXR000081397
INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED ID NUMBER F2135

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: March 10, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 20, 2008 to May 20, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Remington Burklund

Phone: (512) 239-2611

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 10/18/2012 (1040978)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 335, SubChapter A 335.4

TWC Chapter 26 26.121

Description: Failure to prevent the discharge of industrial solid waste or municipal hazardous waste into or adjacent to waters in the state without obtaining authorization.

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BENNIE JOE BYLEY AND
VIRGINIA LYNN GALLOWAY;
RN106531742**

§
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§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-1030-MLM-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondents. The respondents made the subject of this Order are Bennie Joe Byley and Virginia Lynn Galloway ("Respondents").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondents own property located at 11906 Schaefer Road in Schertz, Bexar County, Texas (Bexar County Appraisal District Property ID 309822) (the "Site"). The Site involves the management and/or the disposal of solid waste as defined in TEX. HEALTH & SAFETY ch. 361. The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001 (5).
2. During investigations conducted on October 12, 2012, March 19, 2013, April 5 2013, and April 8, 2013, a TCEQ San Antonio Regional Office Investigator documented that Respondents failed to prevent the unauthorized storage and/or disposal and unauthorized discharge of solid waste into or adjacent to water in the state. Specifically, over fifty 55-gallon drums, two intermediate bulk containers, and numerous smaller containers of miscellaneous chemicals were observed abandoned in various states of deterioration at the Site. Additionally, two areas of spilled oily liquid were observed at the Site.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of David Wise, Administrator of the Estate of Bennie Byley" (the "EDPRP") in the TCEQ Chief Clerk's office on July 16, 2013.
4. David Wise, Administrator of the Estate of Bennie Byley, filed an answer requesting a hearing on September 4, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 17, 2013.
5. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of David Wise, Administrator of the Estate of Bennie Byley; Bennie Joe Byley; Virginia Lynn Galloway; and Pamela Sue Sanderson" (the "EDFARP") in the TCEQ Chief Clerk's office on March 5, 2014.

6. The EDFARP was mailed to each Respondent's last known address on March 5, 2014, via certified mail, return receipt requested, postage prepaid. The Executive Director served Respondent Virginia Lynn Galloway with notice of the EDFARP on March 11, 2014, as evidenced by the signature on the return receipt "green card." The United States Postal Service returned the EDFARP sent by certified mail to Bennie Joe Byley as "unclaimed."
7. The Executive Director re-filed the EDFARP in the TCEQ Chief Clerk's office on March 13, 2014.
8. By letter dated March 13, 2014, sent to Bennie Joe Byley's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Bennie Joe Byley with notice of the EDFARP. According to the return receipt "green card," Bennie Joe Byley received notice of the EDFARP on March 15, 2014, as evidenced by the signature on the card.
9. On March 28, 2014, the Executive Director filed a Motion Proposing an Agreed Hearing Date, which stated that David Wise, Administrator of the Estate of Bennie Byley, Bennie Joe Byley, Virginia Lynn Galloway, Pamela Sue Sanderson, and the Executive Director were in agreement to set the evidentiary hearing for May 2, 2014.
10. On April 2, 2014, the Administrative Law Judge ("ALJ") issued Order No. 4, granting the Executive Director's Motion Proposing an Agreed Hearing Date and setting the evidentiary hearing for May 2, 2014. The SOAH docket clerk mailed a copy of Order No. 4 to David Wise, Administrator of the Estate of Bennie Byley, Bennie Joe Byley, Virginia Lynn Galloway, and Pamela Sue Sanderson at their last known addresses via first class mail, postage pre-paid.
11. On May 2, 2014, the ALJ convened the evidentiary hearing. Bennie Joe Byley and Virginia Lynn Galloway failed to appear, and the Executive Director requested to sever the portion of the case concerning Bennie Joe Byley and Virginia Lynn Galloway, dismiss that portion of the case from the SOAH Docket, and remand that portion to the Executive Director so that a Default Order against Bennie Joe Byley and Virginia Lynn Galloway may be entered by the Commission.¹
12. On June 2, 2014 the ALJ entered a finding that Bennie Joe Byley and Virginia Lynn Galloway were served with proper notice of the hearing and severed, dismissed, and remanded that portion of the matter to the Executive Director by SOAH Order No. 5, Granting Motion to Dismiss and Remand, so that TCEQ may dispose of that portion of the case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondents failed to prevent the unauthorized storage and/or disposal and unauthorized discharge of solid waste into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE §§ 330.7(a) and 335.2(a).
3. As evidenced by Finding of Fact No. 4, an answer requesting a hearing in this matter was filed as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105,

¹ David Wise, Administrator of the Estate of Bennie Byley, and Pamela Sue Sanderson appeared and the evidentiary hearing was held. The ALJ's Proposal for Decision and Proposed Order was adopted by the Commission on September 10, 2014.

and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.

4. As evidenced by Findings of Fact Nos. 5 through 8, the Executive Director timely served Respondents with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
5. As evidenced by Finding of Fact No. 10, Respondents were provided proper notice of the evidentiary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
6. As evidenced by Findings of Fact Nos. 11 and 12, Respondents failed to appear for the evidentiary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the portion of the case regarding Respondents from the SOAH docket so that the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondents are assessed an administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order 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 which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Bennie Joe Byley and Virginia Lynn Galloway; Docket No. 2013-1030-MLM-E" to:

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

3. Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondents shall cease accepting and disposing of any additional unauthorized waste at the Site.
 - b. Within 30 days after the effective date of this Order, Respondents shall remove all unauthorized waste from the Site and properly dispose of it at an authorized facility.
 - c. Within 90 days after the effective date of this Order, Respondents shall conduct an Affected Property Assessment and shall submit an Affected Property Assessment Report, pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, Respondents shall comply with all applicable requirements of the Texas Risk Reduction program found in 30 TEX. ADMIN. CODE ch. 350, which may include plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(I)); and institutional controls under Subchapter F (in accordance with 30 TEX. ADMIN. CODE § 350.111).
 - d. Within 105 days after the effective date of this Order, Respondents shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. through 3.c. The certifications 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."

Respondents shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

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

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

6. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed in Ordering Provision No. 3.d.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ELIZABETH LIEBERKNECHT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Elizabeth Lieberknecht. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of David Wise, Administrator of the Estate of Bennie Byley" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 16, 2013. An answer requesting a hearing was filed on September 4, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 17, 2013.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of David Wise, Administrator of the Estate of Bennie Byley; Bennie Joe Byley; Virginia Lynn Galloway; and Pamela Sue Sanderson" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on March 5, 2014.

The EDFARP was mailed to each Respondent's last known address on March 5, 2014, via certified mail, return receipt requested, postage prepaid. The Executive Director served Virginia Lynn Galloway with notice of the EDFARP on March 11, 2014, as evidenced by the signature on the return receipt "green card." The United States Postal Service returned the EDFARP sent by certified mail to Bennie Joe Byley as "unclaimed."

The Executive Director re-filed the EDFARP in the TCEQ Chief Clerk's office on March 13, 2014. By letter dated March 13, 2014, sent to Respondent Bennie Joe Byley's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Bennie Joe Byley with notice of the EDFARP. According to the return receipt "green card," Bennie Joe Byley received notice of the EDFARP on March 15, 2014, as evidenced by the signature on the card.

On March 28, 2014, the Executive Director filed a Motion Proposing an Agreed Hearing Date for the evidentiary hearing with SOAH. On April 2, 2014, the Administrative Law Judge ("ALJ") issued Order No. 4, granting the Executive Director's Motion Proposing an Agreed Hearing Date and setting the evidentiary hearing for May 2, 2014. The SOAH docket clerk mailed a copy of Order No. 4 to each Respondent at their last known addresses via first class mail, postage pre-paid.

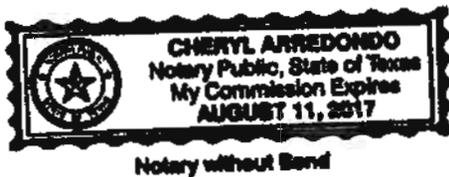
Bennie Joe Byley and Virginia Lynn Galloway failed to appear at the hearing on May 2, 2014. At that hearing, I requested that the ALJ enter a finding that Bennie Joe Byley and Virginia Lynn Galloway were served with proper notice of the hearing, sever the portion of the case concerning Bennie Joe Byley and Virginia Lynn Galloway, dismiss that portion of the case from the SOAH Docket, and remand that portion to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

The ALJ entered a finding that Bennie Joe Byley and Virginia Lynn Galloway were served with proper notice of the hearing and severed, dismissed, and remanded this portion of the matter to the Executive Director by SOAH Order No. 5, Granting Motion to Dismiss and Remand, issued on June 2, 2014, so that TCEQ may dispose of this portion of the case on a default basis."


Elizabeth Lieberknecht, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Elizabeth Lieberknecht, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Subscribed and sworn to before me on this 8th day of Sept, A.D. 2014.




Notary Signature