

Kenneth Cecil Gifford
RN110946704
Docket No. 2021-0361-MSW-E

Order Type:
Default Order

Media:
MSW

Small Business:
N/A

Location(s) Where Violation(s) Occurred:
5535 North Farm-to-Market Road 487, Rockdale, Milam County (the "Site")

Type of Operation:
property with an unauthorized municipal solid waste ("MSW") site

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third Parties:	None

Texas Register Publication Date: January 21, 2022

Comments Received: None

Penalty Information

Total Penalty Assessed: \$3,750

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$3,750

Compliance History Classifications:

Person/CN - Satisfactory
Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): January 6, 2020
Complaint Information: Complainant is concerned that unauthorized disposal of solid waste may be contaminating groundwater.

Date(s) of Investigation: January 24, 2020; February 11, 2021

Date(s) of NOV(s): N/A

Date(s) of NOE(s): March 1, 2021

Kenneth Cecil Gifford
RN110946704
Docket No. 2021-0361-MSW-E

Violation Information

Caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 450 scrap tires were disposed of at the Site [30 TEX. ADMIN. CODE § 330.15(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately cease disposing of any additional MSW, including scrap tires, at the Site.
2. Within 30 days, remove all MSW from the Site and dispose of it at an authorized facility.
3. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.

Litigation Information

Date Petition(s) Filed: August 9, 2021; September 3, 2021

Date Green Card(s) Signed: unclaimed; unclaimed

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Cynthia Sirois, Litigation, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation, (512) 239-2575

TCEQ Enforcement Coordinator: Stephanie McCurley, Enforcement, (512) 239-2607

TCEQ Regional Contact: David Mann, Waco Regional Office, (254) 751-0335

Respondent Contact: Kenneth Cecil Gifford, Owner, 5535 North Farm-to-Market Road 487, Rockdale, Texas 76567

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	1-Mar-2021	Screening	4-Mar-2021	EPA Due	
	PCW	28-Jun-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Kenneth Cecil Gifford
Reg. Ent. Ref. No.	RN110946704
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	60502	No. of Violations	1
Docket No.	2021-0361-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephanie McCurley
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,750
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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	0.0% Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for Compliance History.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$216
 Estimated Cost of Compliance: \$2,250
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,750
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,750
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$3,750
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Screening Date 4-Mar-2021

Docket No. 2021-0361-MSW-E

PCW

Respondent Kenneth Cecil Gifford

Policy Revision 5 (January 28, 2021)

Case ID No. 60502

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN110946704

Media Municipal Solid Waste

Enf. Coordinator Stephanie McCurley

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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>)	0	0%
	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 judgments 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%
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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for Compliance History.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 4-Mar-2021
Respondent Kenneth Cecil Gifford
Case ID No. 60502
Reg. Ent. Reference No. RN110946704
Media Municipal Solid Waste
Enf. Coordinator Stephanie McCurley

Docket No. 2021-0361-MSW-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 330.15(c)

Violation Description

Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste. Specifically, approximately 450 scrap tires were disposed of at the Site.

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 insignificant amounts of pollutants that 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 1 21 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the February 11, 2021 record review date to the March 4, 2021 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	

Notes

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$216

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent Kenneth Cecil Gifford
Case ID No. 60502
Reg. Ent. Reference No. RN110946704
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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	\$2,250	24-Jan-2020	26-Dec-2021	1.92	\$216	n/a	\$216
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to remove the scrap tires and dispose of them at an authorized facility (\$5 per tire). The Date Required is the initial investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs
 (Empty box for notes)

Approx. Cost of Compliance	\$2,250	TOTAL	\$216
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The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN605746262, RN110946704, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN605746262, Kenneth Cecil Gifford **Classification:** SATISFACTORY **Rating:** 1.00

Regulated Entity: RN110946704, Milam County PID 60562 **Classification:** SATISFACTORY **Rating:** 1.00

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 5535 North Farm-to-Market Road 487 in Rockdale, Milam County, Texas

TCEQ Region: REGION 09 - WACO

ID Number(s):
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
R09110946704

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: March 04, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 04, 2016 to March 04, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Stephanie McCurley **Phone:** (512) 239-2607

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

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.

N/A

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
KENNETH CECIL GIFFORD;
RN110946704

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2021-0361-MSW-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7 and 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 respondent. The respondent made the subject of this Order is Kenneth Cecil Gifford ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns a property with an unauthorized municipal solid waste ("MSW") site located at 5535 North Farm-to-Market Road 487 in Rockdale, Milam County, Texas (the "Site"). The Site contains and/or involves the management of municipal solid waste ("MSW"), including scrap tires, as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on January 24, 2020, and a record review conducted on February 11, 2021, an investigator documented that Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 450 scrap tires were disposed of 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 Kenneth Cecil Gifford" (the "EDPRP") in the TCEQ Chief Clerk's office on August 9, 2021.
4. The EDPRP was mailed to Respondent's last known address on August 9, 2021, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
5. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on September 3, 2021.
6. By letter dated September 3, 2021, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.

2. As evidenced by Finding of Fact No. 2, Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Findings of Fact Nos. 3 through 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
6. An administrative penalty in the amount of three thousand seven hundred fifty dollars (\$3,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Respondent is assessed an administrative penalty in the amount of three thousand seven hundred fifty dollars (\$3,750.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The 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 TCEQ and shall be sent with the notation "Re: Kenneth Cecil Gifford; Docket No. 2021-0361-MSW-E" to:

Financial Administration Division
Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease disposing of any additional MSW, including scrap tires, at the Site;
 - b. Within 30 days after the effective date of this Order, remove all MSW from the Site and dispose of it at an authorized facility; and
 - c. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a and 3.b. The certification shall be signed by the Respondent 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.”

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent 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
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives 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 above.
7. If Respondent fails 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. 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.
11. The Chief Clerk shall provide a copy of this fully executed 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF CYNTHIA SIROIS

"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 Kenneth Cecil Gifford" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 9, 2021.

The EDPRP was mailed to Respondent's last known address on August 9, 2021, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on September 3, 2021.

The EDPRP was mailed to Respondent's last known address on September 3, 2021, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

"My name is Cynthia K. Sirois, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,
State of Texas,
on the 28th day of December, 2021

Cynthia K Sirois

Declarant