

Email: ebirch@birchbecker.com

April 11, 2024

VIA EMAIL AND HAND DELIVERY

Mary Smith
General Counsel (MC 101)
Texas Commission on Environmental Quality
Building F, Room 4225
12100 Park 35 Circle
Austin, TX 78753

Email: Mary.Smith@tceq.texas.gov

Re: Request for Continuance, *In the Matter of an Enforcement Action Concerning Edward L. Bradley; RN106145303*, Default Order, Docket No. 2021-1372-AIR-E; Item 9 on TCEQ Commission Meeting Agenda, April 12, 2024

Dear Ms. Smith:

This letter requests a continuance of the above referenced matter concerning a Texas Commission on Environmental Quality (“TCEQ”) Default Order assessing administrative penalties against Edward L. Bradley. The matter is Item 9 on the Agenda for the April 12, 2024 TCEQ Commission Meeting. I am Mr. Bradley’s attorney, and in 2021, I represented him concerning the allegations in this pending matter. I typically review the Commission Meeting Agenda for upcoming meetings, and during my review of the Agenda for the April 12 Commission Meeting, I discovered that a Default Order involving Mr. Bradley was included.

I immediately attempted to contact Mr. Bradley, and after several attempts, Mr. Bradley and I spoke yesterday, at which time he provided the information set out below regarding the addresses used by TCEQ to provide notice of the proposed Agreed Order. That information, coupled with the information regarding my mailing address, demonstrate that Mr. Bradley had no prior notice of the proposed Agreed Order or the pending Default Order.

A copy of the Executive Director’s cover letter, dated April 24, 2023, which was used to convey the Executive Director’s Preliminary Report and Petition (“EDPRP”) to Mr. Bradley is attached to this letter. Below are the four addresses copied from the cover letter followed by the explanation of why Mr. Bradley did not receive the notice.

1. Via Certified Mail, Return Receipt Requested
Article Number 7021 0350 0000 4995 1596
Via First Class Mail, postage prepaid
Edward L. Bradley, Business Owner

P.O. Box 76
Santa Fe, Texas 77517

At one time this was an active mailbox for Mr. Bradley; however, it was not active in April 2023. In approximately December 2022, Mr. Bradley abandoned the P.O. Box and stopped paying the rental fees to the U.S. Postal Service (“Postal Service”). According to the Postal Service, if payment for a P.O. Box has not been received within ten days after the due date, the P.O. Box will be closed and mail will be returned as undeliverable.¹ Mr. Bradley did not receive notice of the EDPRP or the pending Default Order at this address.²

2. Via Certified Mail, Return Receipt Requested
Article Number 7021 0350 0000 4995 1619
Via First Class Mail, postage prepaid
Edward L. Bradley
15111 Highway 6
Santa Fe, Texas 77517

At one time this was an active address for Mr. Bradley; however, it was not active in April 2023. Mr. Bradley sold this property in approximately March 2021 and has not received mail at this address for several years.

3. Via Certified Mail, Return Receipt Requested
Article Number 7021 0350 0000 4995 1602
Via First Class Mail, postage prepaid
Edward L. Bradley
19753 Highway 35
Alvin, Texas 77511

¹ On its website addressing “Frequently Asked Questions,” the Postal Service poses the question “Why was my PO Box closed?” and provides the following response:

A PO Box may be closed if fees have not been paid by the due date. After the fees have become past due, access to the box is blocked. The boxholder has 10 days to pay past due fees and pickup held mail. After that ten days (ten days after the due date), the box is closed and your mail is returned as undeliverable.

See U.S. Postal Service, “PO Box™ – the Basics” at <https://faq.usps.com/s/article/PO-Box-The-Basics>

² Please note that as of February 2024, Mr. Bradley decided to again acquire a P.O. Box and was surprised to learn that his former P.O. Box address, *i.e.*, P.O. Box 76, was still available. The Postal Service once again assigned P.O. Box 76 to Mr. Bradley. However, P.O. Box 76 was not a valid address for Mr. Bradley from December 2022 until the new P.O. Box with the same number was opened by Mr. Bradley in February 2024.

This was a previous leased office location. Mr. Bradley terminated the lease and ceased using this office approximately seven years ago, and has not received mail at this address since that time.

4. Via Certified Mail, Return Receipt Requested
Article Number 7021 0350 0000 4995 1626
Via First Class Mail, postage prepaid
Erich Birch
Birch, Becker & Moorman, LLP
4705 Spicewood Springs Road, Suite 200
Austin, Texas 78759

This was a former address for Birch, Becker & Moorman, LLP (BBM). However, in June 2021 BBM moved its offices from this address to its current address at 1000 Heritage Center Circle, Suite 146, Round Rock, Texas, 78664. BBM had its mail forwarded for the standard twelve-month period provided by the Postal Service, but it has not received mail at this address since June 2022.

Notice is a fundamental due process requirement for citizens of Texas and the United States, and Mr. Bradley had no actual notice of the EDPRP or the Default Order, and in the short period of time between when he learned of the Default Order and the April 12 TCEQ Commission Meeting, he cannot fully evaluate the Executive Director's allegations or prepare an adequate defense.

Mr. Bradley further requests that this matter be continued prior to the Commission Meeting scheduled for April 12. I am Mr. Bradley's lawyer, and I have previously-scheduled travel plans for the upcoming week and cannot attend the TCEQ Commission Meeting in person on April 12. Further, I have commitments on Friday, April 12 that would need to be rescheduled in order to attend the TCEQ Commission Meeting virtually. Therefore, Mr. Bradley and I respectfully request that the matter be continued today prior to the April 12 TCEQ Commission Meeting.

I certify that I conferred with Jennifer Peltier, attorney for the Executive Director of TCEQ on April 9, 2024, regarding a continuance of the matter involving Edward L. Bradley. Ms. Peltier stated that the Executive Director's policy is to oppose all requests for continuance and would not support Mr. Bradley's request.

I certify that I attempted to confer with the Office of Public Interest Counsel ("OPIC") of TCEQ on April 11, 2024, regarding this letter requesting a continuance of the matter involving Edward L. Bradley. I called Sheldon Wayne, the attorney for OPIC identified for this matter, and I also called OPIC's main phone number and left messages for Mr. Wayne and for Garrett Arthur, TCEQ's Public Interest Counsel.

Mary Smith
General Counsel, TCEQ
April 11, 2024
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Please contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Birch", written in a cursive style.

Erich M. Birch
Attorney for Edward L. Bradley

ATTACHMENT

cc: Mr. Edward Bradley

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 24, 2023

Via Certified Mail, Return Receipt Requested,
Article Number 7021 0350 0000 4995 1596
Via First Class Mail, postage prepaid

Edward L. Bradley, Business Owner
P.O. Box 76
Santa Fe, Texas 77517

Via Certified Mail, Return Receipt Requested,
Article Number 7021 0350 0000 4995 1602
Via First Class Mail, postage prepaid

Edward L. Bradley
19753 Highway 35
Alvin, Texas 77511

Via Certified Mail, Return Receipt Requested,
Article Number 7021 0350 0000 4995 1619
Via First Class Mail, postage prepaid

Edward L. Bradley
15111 Highway 6
Santa Fe, Texas 77517

Via Certified Mail, Return Receipt Requested,
Article Number 7021 0350 0000 4995 1626
Via First Class Mail, postage prepaid

Erich Birch
Birch, Becker & Moorman, LLP
4705 Spicewood Springs Road Suite 200
Austin, Texas 78759

Re: Edward L. Bradley; RN106145303;
TCEQ Docket No. 2021-1372-AIR-E

Dear Mr. Bradley:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") is pursuing an enforcement action against you for violations of state statutes and Commission Rules. Enclosed is a copy of 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 Edward L. Bradley" (the "EDPRP"), which was filed today with the Chief Clerk of the TCEQ.

You may employ an attorney. If you or your attorney do not file a written answer with the Chief Clerk of the TCEQ within twenty days after you receive this notice and petition, and/or fail to settle this matter by entering into an Agreed Order, the Commission may issue a default order against you. If a default order is issued, you will be required to pay the assessed penalty and complete any corrective actions recommended by the Executive Director.

YOUR FAILURE TO ACCEPT OR PICK UP CERTIFIED MAIL WILL NOT RELIEVE YOU OF YOUR RESPONSIBILITY IN THIS MATTER.

To request a hearing, send a written hearing request referencing TCEQ Docket No. 2021-1372-AIR-E to the persons listed below via e-mail, regular mail, fax, or e-filing:

Laurie Gharis, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087
(512) 239-3311 (fax)
<https://www14.tceq.texas.gov/epic/eFiling/>

and:

Katherine Keithley, Staff Attorney
Office of Legal Services, Litigation
Texas Commission on Environmental Quality
P.O. Box 13087, MC 175
Austin, Texas 78711-3087
Katherine.Keithley@tceq.texas.gov

and:

Sheldon Wayne, Staff Attorney
Office of Public Interest Counsel
Texas Commission on Environmental Quality
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6377 (fax)
Sheldon.Wayne@tceq.texas.gov

To e-file your hearing request, go to <https://www14.tceq.texas.gov/epic/eFiling/> and follow the on-screen instructions. Hearing requests are due to the Chief Clerk by 5:00 p.m. CST on or before the 20-day deadline date referenced above. Hearing requests filed via e-filing must be in either Microsoft Word or Adobe Acrobat (pdf) format.

All or a portion of the recommended administrative penalty may be offset through the completion of or payment to a Supplemental Environmental Project ("SEP"), which directs all or a portion of your administrative penalty toward projects aimed at improving the environment. For further information on contributing to a SEP, please visit our website at <https://www.tceq.texas.gov/compliance/enforcement/sep>.

For further information concerning the enforcement process, contact the TCEQ Office of Public Interest Counsel at (512) 239-6363. For information concerning compliance assistance, contact the TCEQ Environmental Assistance Division at (800) 447-2827.

If you have any questions or would like to schedule a meeting to discuss settlement, payment plan options, or contribution to a SEP, please contact me at (512) 239-3400 or at my e-mail address listed below. I look forward to cooperatively resolving this matter with you.

Sincerely,



Katherine Keithley, Staff Attorney
Office of Legal Services, Litigation
Texas Commission on Environmental Quality
Katherine.Keithley@tceq.texas.gov

Enclosure

cc: Danielle Porras, Enforcement
Joseph Doby, Houston Regional Office
Sheldon Wayne, TCEQ Office of Public Interest Counsel