

Randy Howell**RN111328944****Docket No. 2022-1435-MSW-E**

Order Type:
Default Order

Media:
MSW

Small Business:
Yes

Location Where Violation Occurred:
626 Bullion Road, Springtown, Wise County (the "Site")

Type of Operation:
unauthorized scrap tire storage

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: September 20, 2024

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,000

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,000

Compliance History Classifications:
Person/CN – Satisfactory
Site/RN – Satisfactory

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date: N/A

Dates of Investigation: September 2, 2021; April 4, 2022;
May 18, 2022; September 30, 2022

Date of NOV: N/A

Date of NOE: October 4, 2022

Randy Howell
RN111328944
Docket No. 2022-1435-MSW-E

Violation Information

Failed to obtain a scrap tire storage site registration for the Site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers.
[TEX. HEALTH & SAFETY CODE § 361.112(a) and 30 TEX. ADMIN. CODE § 328.60(a)].

Corrective Actions/Technical Requirements

Corrective Action Completed:

None

Technical Requirements:

1. Immediately cease storing any additional scrap tires at the Site until proper authorization is obtained.
2. Within 30 days:
 - a. Obtain a scrap tire storage site registration for the Site; or
 - b. Reduce the number of scrap tires stored at the Site to less than 500 on the ground or 2,000 tires in enclosed and lockable containers.
3. Within 45 days submit written certification to demonstrate compliance with Technical Requirement Nos. 1 and 2.

Litigation Information

Date Petition Filed: May 22, 2024

Date of Service: May 29, 2024

Date Answer Filed: N/A

Contact Information

TCEQ Attorneys: Alexander Kepczyk, Litigation Division, (512) 239-3400
Sheldon Wayne, Public Interest Counsel, (512) 239-6363

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

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

TCEQ Regional Contact: Erin Gorman, Dallas/ Fort Worth Regional Office, (817)-588-5800

Respondent Contact: Randy Howell, 103 Golden Oaks Drive, Mabank, Texas 75156

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	3-Oct-2022	Screening	13-Oct-2022	EPA Due	
	PCW	8-Feb-2024				

RESPONDENT/FACILITY INFORMATION

Respondent	Randy Howell				
Reg. Ent. Ref. No.	RN111328944				
Facility/Site Region	4-Dallas/Fort Worth		Major/Minor Source	Major	

CASE INFORMATION

Enf./Case ID No.	63235	No. of Violations	1
Docket No.	2022-1435-MSW-E	Order Type	1660
Media Program(s)	Waste Tires	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephanie McCurley
		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	\$5,000
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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.
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent 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
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Total EB Amounts	\$1,999	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$13,740	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,000
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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	
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Final Penalty Amount	\$5,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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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.
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PAYABLE PENALTY	\$5,000
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Screening Date	13-Oct-2022	Docket No.	2022-1435-MSW-E	PCW
Respondent	Randy Howell			
Case ID No.	63235			
Reg. Ent. Reference No.	RN111328944			
Media	Waste Tires			
Enf. Coordinator	Stephanie McCurley			

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

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 13-Oct-2022 Respondent Randy Howell Case ID No. 63235 Reg. Ent. Reference No. RN111328944 Media Waste Tires Enf. Coordinator Stephanie McCurley	Docket No. 2022-1435-MSW-E	PCW <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>
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Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code § 328.60(a) and Tex. Health & Safety Code § 361.112(a)
Violation Description	Failed to obtain a scrap tire storage site registration for the Site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers. Specifically, approximately 2,748 scrap tires were stored on the ground at the Site.

Base Penalty	\$25,000
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>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0.0%
	Potential				

>> Programmatic Matrix

OR		Harm			
	Falsification	Major	Moderate	Minor	
		x			Percent 20.0%

Matrix Notes	100% of the rule requirement was not met.
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Adjustment	\$20,000
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Adjustment	\$5,000
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Violation Events

Number of Violation Events	1	14	Number of violation days
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	daily		Violation Base Penalty \$5,000
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		

One monthly event is recommended from the September 30, 2022 record review date to the October 13, 2022 screening date.

Good Faith Efforts to Comply

0.0%	Reduction \$0
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	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.
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Violation Subtotal	\$5,000
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Economic Benefit (EB) for this violation

Estimated EB Amount	\$1,999
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Statutory Limit Test

Violation Final Penalty Total	\$5,000
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This violation Final Assessed Penalty (adjusted for limits)	\$5,000
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Economic Benefit Worksheet

Respondent Randy Howell
Case ID No. 63235
Reg. Ent. Reference No. RN111328944
Media Waste Tires
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$13,740	2-Sep-2021	30-Jul-2024	2.91	\$1,999	n/a	\$1,999

Notes for DELAYED costs

Estimated delayed cost to dispose of the scrap tires at an authorized facility (at a cost of \$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

Approx. Cost of Compliance

\$13,740

TOTAL

\$1,999



Compliance History Report

Compliance History Report for CN605929959, RN111328944, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN605929959, Randy Howell

Classification: SATISFACTORY

Rating: 5.00

Regulated Entity: RN111328944, Wise CAD Property ID 000036963

Classification: SATISFACTORY

Rating: 5.00

Complexity Points: 1
CH Group: 14 - Other

Repeat Violator: NO

Location: 626 Bullion Road in Springtown, Wise County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
R04111328944

Compliance History Period: September 01, 2017 to August 31, 2022

Rating Year: 2022

Rating Date: 09/01/2022

Date Compliance History Report Prepared: August 15, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 15, 2018 to August 15, 2023

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):

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
RANDY HOWELL;
RN111328944**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2022-1435-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, 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 Randy Howell ("Respondent").

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

FINDINGS OF FACT

1. Respondent operates an unauthorized scrap tire storage facility located at 626 Bullion Road in Springtown, Wise County, Texas (the "Site"). The Site contains and/or involves the management of scrap tires, as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During investigations and record reviews conducted on September 2, 2021, April 4, 2022, May 18, 2022, and September 30, 2022, an investigator documented that Respondent failed to obtain a scrap tire storage site registration for the Site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers. Specifically, approximately 2,748 scrap tires were stored on the ground 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 Randy Howell" (the "EDPRP") in the TCEQ Chief Clerk's office on May 22, 2024.
4. By letter dated May 22, 2024, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on May 29, 2024, as evidenced by the signature on the card.
5. 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 failed to obtain a scrap tire storage site registration for the Site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers, in violation of TEX. HEALTH & SAFETY CODE § 361.112(a) and 30 TEX. ADMIN. CODE § 328.60(a).

3. As evidenced by Findings of Fact Nos. 3 and 4, 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(b)(1).
4. As evidenced by Finding of Fact No. 5, 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 \$5,000 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 \$5,000 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: Randy Howell; Docket No. 2022-1435-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:
 - i. Immediately upon the effective date of this Order, cease storing any additional scrap tires at the Site until proper authorization is obtained.
 - ii. Within 30 days after the effective date of this Order, comply with either Ordering Provision No. 3.ii.a. or 3.ii.b.:
 - a. Obtain a scrap tire storage site registration for the Site, in accordance with 30 TEX. ADMIN. CODE § 328.60; or
 - b. Reduce the number of scrap tires stored at the Site to less than 500 on the ground or 2,000 tires in enclosed and lockable containers, in accordance with 30 TEX. ADMIN. CODE § 328.60.

- iii. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision Nos. 3.i. and 3.ii. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by 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:

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

and:

Waste Section Manager
Dallas/ Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth Texas 76118

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 Enforcement Division 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.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF ALEXANDER KEPczyk

"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 Randy Howell' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on May 22, 2024.

The EDPRP was mailed to Respondent's last known address on May 22, 2024, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on May 29, 2024, as evidenced by the signature on the card.

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 Alexander Kepczyk, 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 19th day of July, 2024

Alexander Kepczyk

Declarant