

**COPY**

No. D.1.GV.07.000799

STATE OF TEXAS,  
Plaintiff,

v.

CONNER STEEL PRODUCTS, LTD.  
Defendant.

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§

THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53 JUDICIAL DISTRICT

Filed in The District Court  
of Travis County, Texas  
MAY 10 2007  
At 11:41 AM  
Amalia Rodriguez-Mendoza, Clerk

**ORIGINAL PETITION AND  
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

The State of Texas files this Original Petition and Application for Injunctive Relief and for cause of action would respectfully show the following:

**1. DISCOVERY**

1.1 Pursuant to Texas Rule of Civil Procedure 190.1, discovery in this case will be conducted under a Level 2 Discovery Control Plan. TEX. R. CIV. P. 190.3.

**2. PLAINTIFF**

2.1 Plaintiff is the State of Texas (State), represented by the Attorney General, on behalf of the Texas Commission on Environmental Quality (TCEQ or Commission).

2.2 The Attorney General, at the request of the Commission, is authorized to file suit in the name of the State for injunctive relief and civil penalties for violations of the Texas Solid Waste Disposal Act, Chapter 361 of the Health and Safety Code (SWDA), the Texas Clean Air Act, Chapter 382 of the Health and Safety Code (TCAA), the Texas Water Code, and Commission rules and orders promulgated under these statutes. TEX. WATER CODE ANN. § 7.105(a).

2.3 The State is not required to pay a filing fee or other security for costs and is not required to pay a bond prior to the Court granting an injunction. TEX. CIV. PRAC. & REM. CODE § 6.001; TEX. WATER CODE ANN. § 7.032(d).

### 3. DEFENDANT

3.1 Defendant Conner Steel Products, Ltd. (Conner Steel) is a Texas limited partnership. HLC, LLC, a Texas limited liability corporation, is the general partner of Conner Steel. Conner Steel operates a steel and fiberglass tank manufacturing business in San Angelo, Texas. Conner Steel may be served via its registered agent, Aubrey R. Conner, 6738 Highway 87 North, San Angelo, Texas 76901.

### 4. JURISDICTION AND VENUE

4.1 This Court has jurisdiction and venue is proper in Travis County because this is an action to recover civil penalties and injunctive relief for violations of statutes, rules, orders, and permits within the Commission's jurisdiction. TEX. WATER CODE ANN. § 7.105(c).

### 5. APPLICABLE LAW

#### A. The Texas Solid Waste Disposal Act and its rules

##### 1. Discharges and unauthorized processing of solid wastes are prohibited

5.1 No person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or hazardous waste in such a manner as to cause: (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state. 30 TEX. ADMIN. CODE (T.A.C.) § 335.4. The TCEQ adopted this rule pursuant to the Water Code and the SWDA.

5.2 No person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste unless such activity is authorized by a permit, amended permit, or other authorization from the Commission. 30 T.A.C. § 335.2(a).

5.3 "Solid waste" means garbage, refuse, sludge from a waste treatment plant, water

supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. SWDA § 361.003(35); 30 T.A.C. § 335.1(134).

5.4 “Industrial solid waste” means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations. SWDA § 361.003(16); 30 T.A.C. § 335.1(75).

5.5 “Disposal” means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner. SWDA § 361.003(7); 30 T.A.C. § 335.1(41).

5.6 “Processing” means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. SWDA § 361.003(25); 30 T.A.C. § 335.1(118).

5.7 “Storage” means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere. SWDA § 361.003(38); 30 T.A.C. § 335.1(138).

2. **Management of solid waste**

5.8 Anyone who intends to store, process, or dispose of industrial solid waste without a permit must notify the TCEQ. 30 T.A.C. § 335.6(a).

5.9 Any person who generates hazardous waste in amount greater than 100 kilograms per month must submit a notification to the TCEQ containing certain enumerated information on its wastes and waste generating processes. 30 T.A.C. § 335.6(c). This notification is separate from any reporting or recordkeeping requirements. *Id.* Within ninety days of any changes to or becoming aware of any additional information concerning such notification, a person with a registration must provide notice to the TCEQ of the change or additional information. *Id.*

5.10 A person who generates a solid waste must classify and determine if that waste is hazardous. 30 T.A.C. § 335.62. Non-hazardous industrial solid waste must be further classified as Class 1, Class 2, or Class 3 waste at the point of generation. 30 T.A.C. § 335.503(a)(1)-(2). Documentation on each waste stream must be maintained by the generator. 30 T.A.C. § 335.513.

5.11 Hazardous waste generators may accumulate waste on-site without a permit for a maximum of ninety days by adhering to certain requirements. 30 T.A.C. § 335.69(a). A generator who stores hazardous waste in containers must store the ignitable and reactive hazardous wastes at least fifty feet from the property line. 30 T.A.C. §§ 335.69(a)(1)(A) and 335.112(a)(8) (adopting by reference 40 C.F.R. § 265.176). When storing hazardous waste in a container, a generator must also comply with the provisions governing air emissions from containers, which includes installing covers or closure devices as necessary to ensure the containers are closed. 30 T.A.C. §§ 335.69(a) and 335.112(a)(21) (adopting by reference 40 C.F.R. § 265.1087(c)(3)). Containers should remain closed except when adding or removing waste. 30 T.A.C. §§ 335.69(a)(1)(A) and 335.112(a)(8)

(adopting by reference 40 C.F.R. § 265.173(a)). All hazardous waste accumulated on-site should be clearly labeled as hazardous waste. 30 T.A.C. § 335.69(a)(3).

5.12 Generators of hazardous waste who accumulate waste for the maximum 90-day period must have a contingency plan for the facility. 30 T.A.C. §§ 335.69(a)(4)(A) and 335.112(a)(3) (adopting by reference 40 C.F.R. § 265.52(a)). Among other requirements, this contingency plan must describe arrangements agreed to by local emergency personnel and must list a current inventory of emergency equipment maintained at the facility. 30 T.A.C. §§ 335.69(a)(4)(A) and 335.112(a)(3) (adopting by reference 40 C.F.R. § 265.52(c) and (e)). In addition to maintaining a copy of the contingency plan on-site, the generator must also submit copies to all local emergency personnel that may be called upon to provide emergency services. 30 T.A.C. §§ 335.69(a)(4)(A) and 335.112(a)(3) (adopting by reference 40 C.F.R. § 265.53(b)).

5.13 Generators of hazardous waste who accumulate waste for the maximum 90-day period must adhere to certain preparedness and prevention rules. 30 T.A.C. §§ 335.69(a)(4)(A) and 335.112(a)(2) (adopting by reference 40 C.F.R. § 265.37). These preparedness and prevention rules require the owner or operator to make arrangements with emergency personnel to familiarize them with the layout of the facility, the properties of hazardous waste handled at the facility, places where facility personnel are normally working, entrances to roads within the facility, and possible evacuation routes. 40 C.F.R. § 265.37(a)(1). The generator must make these arrangements with any emergency personnel department that might respond. 40 C.F.R. § 265.37(a)(2). Arrangements must also be made to familiarize local hospitals with properties of hazardous wastes handled at the facility and the types of injuries or illnesses that might result from fire, explosion, releases, or other exposure. 40 C.F.R. § 265.37(a)(4).

5.14 A generator of hazardous waste may accumulate up to 55 gallons of hazardous waste at or near the point of generation provided that the container holding the waste is labeled "hazardous waste" or other identifying words and is closed at all times, except when necessary to add or remove waste. 30 T.A.C. §§ 335.69(d)(1)-(2) and 335.112(a)(8) (adopting by reference 40 C.F.R. §§ 265.171, 265.172, and 265.173(a)). Any hazardous waste accumulated in excess of 55 gallons must be removed to the normal accumulation area within three days. 30 T.A.C. § 335.69(e). The generator must mark the container holding the excess accumulation with the date the excess amount began accumulating. *Id.*

5.15 No generator of hazardous or Class 1 waste shall ship the waste unless it adheres to the applicable requirements, which include manifesting, selecting an appropriate disposal facility, and retaining certain records. 30 T.A.C. § 335.10.

5.16 Used oil generators must label all used oil containers used to store used oil with the words "Used Oil." 30 T.A.C. § 324.1 (adopting by reference 40 C.F.R. § 279.22(c)(1)).

### **3. Recordkeeping and reporting requirements**

5.17 All large quantity generators, small quantity generators, and Toxic Release Inventory (TRI) Form R reporters must develop pollution prevention plans as specified by the Waste Reduction Policy Act and rules promulgated pursuant to it. SWDA § 361.504; 30 T.A.C. § 335.473. These plans should outline a five-year reduction plan and should be updated as necessary. 30 T.A.C. § 335.474. Generators should maintain the plans on-site and make them available to TCEQ personnel for inspection. *Id.*

5.18 All facilities required to develop pollution prevention plans must maintain, update, and renew the plans as necessary until the facility no longer fulfills the applicability rules or is

exempted according to the rules. 30 T.A.C. §335.475. Within ninety days of the initial annual waste summary report or TRI Form R submission, the facility must submit an executive summary of the plan and a certificate of completeness to the TCEQ, and must have the plan available for inspection on-site. *Id.*

5.19 Owners or operators of facilities generating hazardous waste must maintain records documenting the job title for each position related to hazardous waste management, the person filling that position, and a written job description for that position. 30 T.A.C. §§ 335.69(a)(4)(A) and 335.112(a)(1) (adopting by reference 40 C.F.R. § 265.16(d)(1)-(2)).

5.20 All generators of hazardous waste must keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed. 30 T.A.C. § 335.9(a)(1). At a minimum, generators must keep the records enumerated in the rules including among others the description, character, and classification of each waste as well as the quantity generated. *Id.*

5.21 A generator must determine if the hazardous waste must be treated before land disposal. 30 T.A.C. § 335.431(c) (adopting by reference 40 C.F.R. § 268.7(a)(1)). If the waste does not meet the treatment standard, the generator must notify the treatment or disposal facility with the initial shipment and must retain a copy for its records. 30 T.A.C. § 335.431(c) (adopting by reference 40 C.F.R. § 268.7(a)(2)). All generators must maintain Land Disposal Restriction (LDR) forms and any other documentation used for on-site or off-site treatment, storage, or disposal. 30 T.A.C. § 335.431(c) (adopting by reference 40 C.F.R. § 268.7(a)(8)).

**B. The Texas Clean Air Act and its rules**

5.22 A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of the TCAA or of any Commission rule or order. TCAA § 382.085(b).

5.23 “Air contaminant” means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural. TCAA § 382.003(2).

5.24 Before any facility that will emit air contaminants is constructed and operated the facility must obtain a new source review permit. TCAA § 382.0518(a). The type of permit required depends on the facility and may be a permit, a standard permit, a flexible permit, or a permit by rule. 30 T.A.C. § 116.110(a).

5.25 “Facility” means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. TCAA § 382.003(6).

5.26 Outdoor sandblasting is an activity regulated by the Commission. *See* 30 T.A.C. §§ 116.110(a)(4), 106.452. No person may begin construction of an outdoor sandblasting facility without first registering the facility with the Commission and receiving written approval from the Commission. 30 T.A.C. § 106.452(2)(E). The blast cleaning is to be performed at least 500 feet from any recreational area or residence or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located. 30 T.A.C. § 106.452(2)(B).

5.27 No person may cause, suffer, allow, or permit any outdoor burning except as provided

by the TCAA or by orders or permits of the Commission. 30 T.A.C. § 111.201.

5.28 Permitted facilities must comply with all of the special conditions contained in the permit. 30 T.A.C. § 116.115(c).

5.29 In order to receive a permit by rule, a surface coating facility, among other requirements, must maintain records on the materials used and the activities conducted. 30 T.A.C. § 106.433(8).

5.30 An applicant shall make a good faith effort to submit, in a timely manner, adequate information demonstrating that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the TCEQ; if an applicant fails to do so after two written notices of deficiency, the TCEQ shall void the application and notify the applicant of the voidance and the remaining deficiencies in the voided application. 30 T.A.C. §116.114(b).

5.31 A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution. TCAA § 382.085(a).

**C. Enforcement: civil penalties and injunctive relief**

**1. Violation of a statute, rule, order or permit is prohibited**

5.32 A person may not cause, suffer, allow or permit a violation of a statute within the Commission's jurisdiction or a rule adopted or an order or permit issued under such statute. TEX. WATER CODE § 7.101.

5.33 A "person" includes "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." TEX. GOV'T CODE § 311.005(2).

5.34 A person who violates the SWDA, the TCAA, the Water Code, or a Commission permit, rule, or order, is liable for a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation. TEX. WATER CODE ANN. § 7.102. Each day of a continuing violation is a separate violation. *Id.*

**2. Injunctive relief**

5.35 The Attorney General, at the request of the Commission, is authorized to file suit in the name of the State for injunctive relief and civil penalties for violations of the SWDA, the TCAA, the Texas Water Code, and Commission rules and orders promulgated thereunder. TEX. WATER CODE ANN. § 7.105(a).

5.36 The Commission may also seek injunctive relief to require persons responsible for solid waste to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate a release or threatened release of solid waste. SWDA § 361.273(2).

5.37 “Persons responsible for solid waste” include (1) any owner or operator of a solid waste facility and (2) any person that owned or operated a solid waste facility at the time of processing, storage, or disposal of any solid waste. SWDA § 361.271(a)(1)-(a)(2).

5.38 A “solid waste facility” means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. SWDA § 361.003(36).

5.39 A “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. SWDA § 361.003(28).

**3. Attorney’s fees and costs**

5.40 If the State prevails in this suit, it is entitled to its reasonable attorney's fees and court and investigative costs incurred in pursuing this case. TEX. WATER CODE § 7.108.

## 6. BACKGROUND

6.1 Conner Steel owns and operates a facility that manufactures steel and fiberglass storage tanks as well as the stairways and walkways used to access them.

6.2 The facility is located at 6738 Hwy 87 North, San Angelo, Texas 76901.

6.3 In addition to tank fabrication, Conner Steel sandblasts and paints tanks prior to distribution.

6.4 Several wastes are generated during the manufacturing process, and these wastes are stored on-site prior to disposal.

6.5 The manufacturing process also results in air emissions that are regulated by statute and rule.

### A. The 2004 Agreed Order

6.6 Conner Steel and the TCEQ entered into an Agreed Order to resolve a SWDA and Water Code enforcement action, effective on May 14, 2004 (the 2004 Order). In the 2004 Order, Conner Steel and the Commission stipulated that Conner Steel managed industrial solid waste on-site and that Conner Steel had allowed the discharge of waste in violation of TEX. WATER CODE ANN. ch. 26. The TCEQ found that Conner Steel had failed to comply with Storm Water Pollution Prevention Plan permit requirements. The TCEQ also found that Conner Steel had not provided written documentation of calendar quarters that did not have a discharge of storm water and had failed to prevent the discharge of industrial solid waste into or adjacent to the waters of the state. Conner Steel has paid an administrative penalty of \$6,820.

**B. The 2005 Agreed Order**

6.7 Conner Steel and the TCEQ entered into another Agreed Order to resolve a TCAA enforcement action with an effective date of September 30, 2005 (the 2005 Order). In the 2005 Order, the TCEQ found that Conner Steel was operating a plant that contained several air emission sources. In the Order, the TCEQ further found Conner Steel had failed to obtain permits for these air emission sources and had neither submitted an emission inventory for 2003 nor paid the corresponding emissions fees. Conner Steel has paid \$9,760 of a \$12,200 administrative penalty assessed by the TCEQ. The TCEQ agreed to defer \$2,440 contingent upon Conner Steel's timely, full compliance with the Order.

**C. December 14, 2005 inspection**

**1. Discharges and unauthorized processing of solid waste**

6.8 A TCEQ investigator visited the Conner Steel facility on December 14, 2005 (the December 2005 Investigation), and observed the following concerning discharges and mismanagement of solid waste:

- (1) management of solid waste in open 55-gallon containers located in an alley accessible to children;
- (2) discharge of sandblast media to the environment;
- (3) discharges of petroleum hydrocarbon to the environment;
- (4) improper disposal of welding waste;
- (5) discharge of waste welding flux to the environment;
- (6) discharge of fire residue waste to the environment;
- (7) storage of an unidentified waste in a punctured 55-gallon container resulting in a

- discharge to the environment;
- (8) off-site discharge of hydrostatic test water;
  - (9) petroleum hydrocarbon discharge resulting in a sheen on ponded water;
  - (10) improper disposal of a solvent aerosol can found floating in ponded water;
  - (11) liquid paint waste stored in dumpster intended for disposal at the municipal landfill; and
  - (12) liquid acetone and styrene resin waste mixture stored in dumpster intended for disposal at the municipal landfill.

6.9 During the December 2005 Investigation, the TCEQ investigator observed unauthorized treatment and disposal activities. Conner Steel personnel informed the investigator that waste acetone was allowed to volatilize from open containers. The investigator observed collection paper from which waste acetone was allowed to volatilize and the offering of such paper for disposal at the City of San Angelo Landfill by placing it in the dumpster. The investigator also observed open containers of product solvents being utilized.

## **2. Management of solid waste**

6.10 The TCEQ investigator also observed during the December 14, 2005 site visit that Conner Steel generated more than 100 kg of hazardous waste in January 2005 but did not notify the TCEQ of this activity.

6.11 The TCEQ investigator also observed that as of December 14, 2005, neither hazardous waste determinations nor solid waste classifications had been conducted on the following wastes:

- (1) wastewater from fire residue managed in fiberglass tanks;

- (2) waste resin overspray;
- (3) hydrostatic test water discharged to the alley;
- (4) fiberglass tank air filters;
- (5) paint booth air filters;
- (6) paint containing absorbent;
- (7) containerized paint waste found in the paint booth;
- (8) sandblast waste;
- (9) waste welding slag;
- (10) wastewater from the plasma cutting machine;
- (11) plant trash;
- (12) office trash;
- (13) florescent bulbs;
- (14) waste leaking from the 3-gallon container found behind the welding building;
- (15) fire residue waste found in three 55-gallon containers;
- (16) waste ash generated from unauthorized outdoor burning;
- (17) paint waste from the paint booth stored in three 55-gallon containers found in the storage yard;
- (18) welding waste disposed of behind the welding building;
- (19) unidentified blue material stored in an open 55-gallon fiber container;
- (20) expired Carboline Carbozinc; and
- (21) eighty-one drums of waste identified on Safety Kleen form M002545899.

6.12 During the December 2005 Investigation, the TCEQ investigator also observed two

open 55-gallon containers of waste located in the alley that were not marked except for the word "resin," contravening the rules requiring ignitable waste to be stored at least fifty feet from the property line, waste containers to remain closed except when adding or removing waste, waste generators to control air emissions from containers, and hazardous waste to be clearly labeled.

6.13 During the site visit, Conner Steel personnel were not able to produce records documenting the job title for each position related to hazardous waste management, the persons filling those positions, and a written job description for those positions.

6.14 The TCEQ investigator observed during the December 2005 Investigation that Conner Steel had failed to maintain the required records for the facility's contingency plan or to submit the contingency plan to the required entities.

6.15 Additionally, the TCEQ investigator noted during the December 2005 Investigation that Conner Steel had failed to familiarize the police, fire departments and emergency response teams with the facility layout, properties of hazardous wastes handled, places where personnel would be normally working, entrance roads, and possible evacuation routes as required by the preparedness and prevention rules.

6.16 Also during the December 2005 Investigation the investigator observed wastes to be located at varying locations throughout the site, such as the two 55-gallon open containers of waste in the alley.

6.17 The TCEQ investigator documented during the December 2005 Investigation that Conner Steel personnel failed to accurately complete at least two manifests.

6.18 The TCEQ investigator observed during the December 2005 Investigation two containers of used oil without labels.

**3. Recordkeeping and reporting requirements**

6.19 During the December 2005 Investigation, Conner Steel personnel informed the TCEQ investigator that a source reduction waste minimization plan had not been developed. Conner Steel has been a TRI Form R<sup>1</sup> reporter since the 2001 reporting year.

6.20 The TCEQ investigator also noted during the December 2005 Investigation that Conner Steel had failed to retain most records of hazardous and industrial waste activities. This deficiency included but was not limited to the cradle to grave tracking of the hazardous wastes generated and accumulation areas located on-site.

6.21 The TCEQ investigator during the December 2005 Investigation was not able to review some of the relevant LDR information of wastes shipped off-site for disposal because those records had not been retained.

**4. Operation of air emission units**

6.22 On August 5, 2005, Conner Steel was issued New Source Review (NSR) Permit Number 74024. Special Condition 10 of the permit requires that all used solvents and cleanup rags must be stored in sealed containers until removed from the site, reused, or recycled. Special Condition 13 requires that all new and used resins be stored in closed containers until used or removed from the site.

6.23 During the December 2005 Investigation, the TCEQ investigator observed:

- (1) evidence of unauthorized outdoor burning in two barrels;

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<sup>1</sup> TRI Form R is the reporting form used by regulated entities to report their release of certain toxic chemicals as required by the Emergency Planning and Community Right-to-Know Act. Conner Steel has submitted TRI Form R reports for styrene and xylene.

- (2) used solvents/waste resin in open containers;
- (3) surface coating activities in the paint booth;
- (4) no records of the activities conducted in the paint booth; and
- (5) outside sandblasting.

**D. November 12-15, 2006 Ambient Air Monitoring Project**

6.24 The TCEQ Mobile Monitoring Team (MMT) conducted an ambient air monitoring project, including real time gas chromatography monitoring and collecting of whole-air samples, along the fence line of the Conner facility and in the neighborhood to the east and southeast of the facility on November 12-15, 2006 and observed the following:

- (1) Strong odors were noted by the MMT in the alleyway between the east property line and a nearby residence; the odors were stronger when the doors to the fiberglass fabrication area were being opened or closed;
- (2) the maximum reported 1-hour average concentration of styrene (240 ppb<sub>v</sub>) was associated with an instantaneous concentration of 480 ppb<sub>v</sub>, both of which exceed the odor threshold and the short-term, health-based effects screening level (ESL); and
- (3) air samples confirmed odorous styrene concentrations of 98, 63, and 27 ppb<sub>v</sub>, which may cause secondary health effects in sensitive individuals such as eye irritation and nausea.

**E. December 21, 2006 - January 31, 2006 Inspection**

6.25 A TCEQ investigator visited the Conner facility on December 21, 2006 and subsequently obtained records that documented the following:

- (1) surface coating activities had occurred in the fiberglass tank manufacturing building on December 12, 2006, January 11, 2007, January 23, 2007, and January 24, 2007; and
- (2) emissions from surface coatings are not authorized under the permit for the fiberglass tank manufacturing building.

6.26 Emissions from the fiberglass manufacturing building were not being exhausted through filters which abate particulates at 95% efficiency.

**F. February 21, 2007 Voidance of Air Permit Application Amendment**

6.27 The TCEQ received from Conner Steel a General Application for Air Preconstruction Permits and Amendments dated July 5, 2006 (No. 74024) for operation of its paint booth, increased throughputs from the fiberglass tank manufacturing facility, and abrasive blasting. On August 24, 2006 and January 23, 2007, the TCEQ requested additional information by letters.

6.28 On February 21, 2007, the TCEQ notified Conner via letter that the application was voided due to a complete and accurate reply not being received within the time period requested.

**G. February 22, 2007 to March 2, 2007 Inspection**

6.29 On February 22, 2007, February 28, 2007, March 1, 2007, and March 2, 2007, a TCEQ investigator visited the Conner facility and observed visible emissions from the sand blasting operation and the doors to the sand blasting building were left open.

**7. FIRST CLAIM: CIVIL PENALTIES FOR DISCHARGES AND UNAUTHORIZED PROCESSING OF SOLID WASTE**

7.1 Commission investigation has documented multiple discharges of industrial solid waste and hazardous waste at the facility in violation of the SWDA and Commission rules.

7.2 The State requests that this Court assess civil penalties against Conner Steel, within the statutory range of not less than \$50 nor more than \$25,000 for each day of each violation.

7.3 Conner Steel violated 30 T.A.C. §§ 335.2(a) and 335.4 on at least December 14, 2005 as follows:

- (1) by discharging sandblast media to the environment;
- (2) by discharging and failing to remediate petroleum hydrocarbon spills near the old compressor station, near the metal pipe and channel iron cutting station, near the old crane parking area, in the mobile fuel tank parking area, in the old oil storage area, and near the hydrostatic test location;
- (3) by discharging and improperly disposing of welding waste when it was left littering the ground behind the welding building;
- (4) by discharging waste welding flux when it was allowed to issue from beneath the building's metal siding;
- (5) by storing an unidentified waste in a punctured 55-gallon container resulting in a discharge to the environment;
- (6) by allowing hydrostatic test water to discharge off-site;
- (7) by storing liquid paint waste in a dumpster intended for disposal at the City of San Angelo Landfill;
- (8) by storing liquid acetone and styrene resin waste mixture in a dumpster intended for disposal at the City of San Angelo Landfill; and
- (9) by discharging liquid acetone and styrene resin waste mixture to the environment by allowing it to run down the side of the dumpster where it was stored.

7.4 Conner Steel violated 30 T.A.C. §§ 335.4 from December 7, 2005 until December 14, 2005 by storing hazardous acetone/styrene resin waste mixture in two open 55-gallon containers in an alley adjacent to residential homes and accessible to children.

7.5 Conner Steel violated 30 T.A.C. §§ 335.4 from January 25, 2005 until December 14, 2005 by managing fire residue waste in a mangled fiberglass tank and thereby allowing the fire residue waste to discharge to the environment.

7.6 Conner Steel violated 30 T.A.C. § 335.2(a) from December 14, 2005 until August 23, 2006 by treating hazardous waste without authorization and by improperly disposing of hazardous waste. Conner Steel treated hazardous waste when it allowed acetone to volatilize by leaving acetone containers open to the environment and spraying acetone onto paper during resin gun cleaning. Conner Steel improperly disposed of hazardous waste by placing acetone waste paper in the dumpster intended for disposal at the City of San Angelo Landfill.

## **8. SECOND CLAIM: CIVIL PENALTIES FOR MISMANAGEMENT OF SOLID WASTE**

8.1 Commission investigation has documented that Conner Steel managed solid waste, industrial solid waste, and hazardous waste at the facility in violation of the SWDA and Commission rules.

8.2 The State requests that this Court assess civil penalties against Conner Steel, within the statutory range of not less than \$50 nor more than \$25,000 for each day of each violation.

8.3 Conner Steel violated 30 T.A.C. § 335.6 by generating more than 100 kg of hazardous waste in January 2005 but failing to notify the TCEQ of this activity. Conner Steel's violation of this rule began January 25, 2005 and continued until at least December 16, 2005.

8.4 Conner Steel violated 30 T.A.C. §§ 335.62, 335.503, and 335.513 from December 14, 2005 to March 17, 2006 by failing to perform a hazardous waste determination and a non-hazardous solid waste classification on sandblast waste.

8.5 Conner Steel violated 30 T.A.C. §§ 335.62, 335.503, and 335.513 from December 14, 2005 to August 22, 2006 by failing to perform a hazardous waste determination and a non-hazardous solid waste classification on waste resin overspray and hydrostatic test water discharged to the alley.

8.6 Conner Steel violated 30 T.A.C. §§ 335.62, 335.503, and 335.513 from December 14, 2005 to the present by failing to perform a hazardous waste determination and a non-hazardous solid waste classification on the following:

- (1) wastewater from fire residue managed in a fiberglass tanks;
- (2) fiberglass tank air filters;
- (3) paint booth air filters;
- (4) paint containing absorbent;
- (5) containerized paint waste found in the paint booth;
- (6) waste welding slag;
- (7) wastewater from the plasma cutting machine;
- (8) plant trash;
- (9) office trash;
- (10) florescent bulbs;
- (11) waste leaking from the 3-gallon container found behind the welding building;
- (12) fire residue waste found in three 55-gallon containers;

- (13) waste ash generated from unauthorized outdoor burning;
- (14) paint waste from the paint booth stored in three 55-gallon containers found in the storage yard;
- (15) welding waste disposed of behind the welding building;
- (16) unidentified blue material stored in an open 55-gallon fiber container;
- (17) expired Carboline Carbozinc; and
- (18) eighty-one drums of waste identified on Safety Kleen form M002545899.

8.7 Conner Steel violated 30 T.A.C. §§ 335.69(a) & (e) and 335.112(a) from December 7, 2005 until December 14, 2005 in the following ways:

- (1) by failing to manage ignitable waste at least 50 feet from the property line when it placed two 55-gallon drums of acetone/styrene resin waste mixture in the alley;
- (2) by failing to ensure the two 55-gallon drums of acetone/styrene resin waste mixture had the proper closure to prevent air emissions;
- (3) by failing to ensure the two 55-gallon drums of acetone/styrene resin waste mixture remained closed except when adding or removing waste;
- (4) by failing to label the two 55-gallon drums of acetone/styrene resin waste mixture as hazardous waste or with an accumulation date (satellite wastes not moved to a container storage area within three days becomes subject to the 90-day accumulation standards); and
- (5) by failing to remove accumulated hazardous waste in excess of fifty-five gallons from near the satellite accumulation area.

8.8 Conner Steel violated 30 T.A.C. §§ 335.69(d)(1)-(2) from December 14, 2005 until

August 23, 2006 by allowing containers in the fiberglass tank department storing waste acetone to remain uncovered and volatilize overnight.

8.9 Conner Steel violated 30 T.A.C. §§ 335.69(a)(4) and 335.112(a)(3) from January 25, 2005 until the present in the following manner:

- (1) by failing to make arrangements with state and local emergency response agencies regarding their response to potential incidents at the facility as required in a Contingency Plan;
- (2) by failing to list all emergency equipment available on-site, the location of such equipment, and a description of such equipment in the Contingency Plan; and
- (3) by failing to submit a copy of the Contingency Plan to all state and local agencies providing emergency response.

8.10 Conner Steel violated 30 T.A.C. §§ 335.69(a)(4) and 335.112(a)(2) regarding preparedness and prevention rules from January 25, 2005 until August 21, 2006 by failing to educate the police department, the fire department, all potential emergency responders, and the hospital on the layout of the facility, the properties of hazardous waste handled at the facility, possible evacuation routes, and the types of injuries or illness that could occur.

8.11 Conner Steel violated 30 T.A.C. § 335.10(b) on December 14, 2005 by failing to properly complete manifests AR-1070868 and 3512672. Manifest AR-1070868 did not contain Conner Steel's phone number, the transporter information, or the TCEQ waste code. Manifest 3512672 did not identify a TCEQ transporter ID, a second transporter phone number, or the correct EPA identification number for Conner Steel.

8.12 Conner Steel violated 30 T.A.C. § 324.1 on December 14, 2005 by failing to label

two containers of used oil, which were found in the metal storage yard and sandblasting storage area, with the words "used oil".

### **9. THIRD CLAIM: CIVIL PENALTIES FOR FAILURES IN RECORDKEEPING AND REPORTING OF SOLID WASTE ACTIVITIES**

9.1 Commission investigation has documented that Conner Steel failed to keep certain records and generate certain reports in violation of the SWDA and Commission rules.

9.2 The State requests that this Court assess civil penalties against Conner Steel, within the statutory range of not less than \$50 nor more than \$25,000 for each day of each violation.

9.3 Conner Steel violated §§ 335.473-335.475 from September 30, 2002 (90 days after their initial TRI Form submittal) until the present by failing to generate and update as necessary a Source Reduction Waste Minimization Plan. Conner Steel is required to generate and maintain this plan not only because it has been either a large quantity or small quantity hazardous waste generator but also because it is a TRI Form R reporter.

9.4 Conner Steel violated § 335.9(a)(1) on December 14, 2005 in the following manners:

- (1) by failing to maintain most records of hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing , or disposal; and
- (2) by failing to provide the TCEQ investigator records of the location of hazardous waste accumulation areas.

9.5 Conner Steel violated §§ 335.69(a)(4) and 335.112(a)(1) on December 14, 2005 by failing to maintain a record of the names, job titles, and job descriptions for each employee in a position related to hazardous waste management.

9.6 Conner Steel violated § 335.431(c) on December 14, 2005 by failing to maintain a record of LDR forms relating to wastes shipped on manifests AR-1070868, S01058315, and 3512672.

**10. FOURTH CLAIM: CIVIL PENALTIES FOR VIOLATIONS OF THE TCAA AND COMMISSION RULES**

10.1 Commission investigation has documented multiple violations of the TCAA and Commission rules.

10.2 The State requests that this Court assess civil penalties against Conner Steel, within the statutory range of not less than \$50 nor more than \$25,000 for each day of each violation.

10.3 Conner Steel violated 30 T.A.C. § 111.201 on or about December 14, 2005 by conducting unauthorized outdoor burning of which the TCEQ investigator observed the ashes and remnant material in two barrels.

10.4 Conner Steel violated 30 T.A.C. § 116.115(c) and Special Conditions 10 and 13 of NSR Permit 74024 from December 7, 2005 until December 14, 2005 by failing to store all used solvents in sealed containers until removed from the site, reused, or recycled and waste resin in closed containers. The TCEQ investigator observed two uncovered 55-gallon drums of acetone/styrene resin waste mixture in the alley, which were placed there one week prior to site visit in order to allow the acetone to volatilize.

10.5 Conner Steel violated 30 T.A.C. § 116.110(a)(1) from January 1, 2005 until December 14, 2005 by failing to obtain authorization prior to increasing emission from the surface coating activities in the paint booth. The documented average weekly VOC emissions from surface coating was greater than 500 pounds per week for the 2005 calendar year, thus exceeding the Permit

by Rule requirements.

10.6 Conner Steel also violated 30 T.A.C. § 116.110(a)(1) from the date construction of blast cleaning operations commenced to the present, by failing to obtain authorization prior to constructing and operating blast cleaning operations, a facility that emits air contaminants.

10.7 Conner Steel violated 30 T.A.C. § 106.433(8) from January 1, 2005 until December 14, 2005 by failing to maintain a monthly report for the paint booth representing the actual hours of operation each day, and emissions in pounds per hour, pounds per day, pounds per week and tons emitted from the booth during the previous twelve months.

10.8 Conner Steel violated TCAA § 382.085(a) from November 12, 2006 to November 15, 2006 by causing styrene emissions tending to be injurious to residential areas surrounding the facility.

10.9 Conner Steel also violated 30 T.A.C. § 116.110(a)(1) from December 12, 2006 to January 24, 2007 by failing to operate the fiberglass tank manufacturing facility as specified in the application for permit. Specifically, emissions from the fiberglass manufacturing building were not being exhausted through filters which abate particulates at 95% efficiency.

10.10 Conner Steel violated 30 T.A.C. § 116.116(a)(1) from December 12, 2006 to January 24, 2007 by failing to obtain authorization for emissions from surface coating activities in the fiberglass tank manufacturing building.

10.11 Conner Steel continued to violate 30 T.A.C. § 116.110(a)(1) from February 22, 2007 to March 2, 2007 by performing unauthorized outside sand blasting operations without registering the operations and obtaining site approval as required under 30 T.A.C. § 106.452(2) or obtaining a permit under 30 T.A.C. § 116.111.

10.12 Conner Steel also violated 30 T.A.C. § 116.110(a)(1) from April 1, 2006 through March 23, 2007 by failing to obtain a permit amendment for annual styrene emissions greater than what is authorized under Permit Number 74024.

## **11. FIFTH CLAIM: INJUNCTIVE RELIEF**

### **A. Injunctive relief for violation of the SWDA and Commission rules**

11.1 As shown above, Conner Steel violated provisions of the SWDA and Commission rules.

11.2 The State seeks a temporary injunction ordering Conner Steel to comply with the SWDA and Commission rules. Specifically, the State requests an injunction ordering Conner Steel to:

- (1) immediately cease all unauthorized discharges;
- (2) immediately manage industrial solid waste in a manner protective of human health and the environment by:
  - (1) storing waste in the proper containers and in the proper locations in full accordance with 30 T.A.C. §§ 335.69(a) & (e) and 335.112(a) (adopting 40 C.F.R. 265, Subparts I & CC);
  - (2) closing all waste containers in full accordance with 30 T.A.C. §§ 335.69(a)(1)(A) and 335.112(a)(21) (adopting by reference 40 C.F.R. § 265.173(a));
  - (3) labeling all waste containers in full accordance with 30 T.A.C. §§ 335.69(a) and 335.112(a) (adopting 40 C.F.R. 265, Subparts I & CC); and
  - (4) marking all containers with accumulation time markings in full accordance with 30 T.A.C. §§ 335.69(a) and 335.112(a) (adopting 40 C.F.R. 265, Subparts I & CC);
- (3) immediately cease all unauthorized treatment of hazardous waste in full accordance with 30 T.A.C §§ 335.2(a) and 335.4;

- (4) immediately dispose of all industrial solid waste at authorized facilities in full accordance with Title 30, Chapter 335 of the Texas Administrative Code;
- (5) within 15 days of the effective date of the injunction, conduct a hazardous waste determination and a non-hazardous solid waste classification in full accordance with 30 T.A.C. §§ 335.62, 335.503, and 335.512 on:
  - (1) wastewater from fire residue managed in a fiberglass tanks;
  - (2) waste resin overspray;
  - (3) hydrostatic test water discharged to the alley;
  - (4) fiberglass tank air filters;
  - (5) paint booth air filters;
  - (6) paint containing absorbent;
  - (7) containerized paint waste found in the paint booth;
  - (8) sandblast waste;
  - (9) waste welding slag;
  - (10) wastewater from the plasma cutting machine;
  - (11) plant trash;
  - (12) office trash;
  - (13) florescent bulbs;
  - (14) waste leaking from the 3-gallon container found behind the welding building;
  - (15) fire residue waste found in three 55-gallon containers;
  - (16) waste ash generated from unauthorized outdoor burning;
  - (17) paint waste from the paint booth stored in three 55-gallon containers found in the storage yard;

- (18) welding waste disposed of behind the welding building;
  - (19) unidentified blue material stored in an open 55-gallon fiber container;
  - (20) expired Carboline Carbozinc; and
  - (21) eighty-one drums of waste identified on Safety Kleen form M002545899;
- (6) immediately begin maintaining all required records in full accordance with Title 30, Chapter 335 of the Texas Administrative Code;
  - (7) within 15 days of the effective date of the injunction, make arrangements with all local emergency responders regarding their response to facility emergencies and educate them on potential hazards that may be encountered; and
  - (8) within 30 days of the effective date of the injunction, provide written documentation to the TCEQ demonstrating Conner Steel's compliance with the provisions of the injunction.

11.3 As shown above, Conner Steel has committed multiple releases of solid and hazardous waste. The State, therefore, also seeks a permanent injunction ordering Conner Steel to:

- (1) complete an Affected Property Assessment Report (APAR) in accordance with 30 T.A.C. Chapter 350, subchapter C within ninety (90) days after the effective date of the injunction;
- (2) submit to the TCEQ a letter status report listing generally all assessment activities that have been undertaken in the previous month beginning 30 days after the effective date of the injunction and monthly thereafter;
- (3) submit to the TCEQ for approval an Affected Property Assessment Report (APAR) in accordance with 30 T.A.C. § 350.91 within 120 days after the effective date of the injunction;
- (4) submit to the TCEQ for approval a Response Action Plan (RAP) in accordance with 30 T.A.C. § 350.94 within 120 days after the effective date of the injunction;
- (5) begin implementing the approved response action specified in the RAP in accordance with the approved schedule in the RAP within 21 days after Conner Steel receives the TCEQ's written approval of the RAP;
- (6) If required by the approved RAP and TRRP, submit to the TCEQ an acceptable

financial assurance mechanism in the amount set forth in the approved RAP in full accordance with 30 T.A.C. Chapter 37, subchapter N within 90 days after Conner Steel receives the TCEQ's written approval of the RAP;

- (7) submit to the TCEQ for approval documentation of any institutional controls specified in the RAP within 120 days after Conner Steel receives the TCEQ's written approval of the RAP;
- (8) submit to the TCEQ a Response Action Effectiveness Report (RAER) in accordance with 30 T.A.C. § 350.93 within 180 days after Conner Steel receives the TCEQ's written approval of the RAP and every year thereafter; and
- (9) submit to the TCEQ for approval a Response Action Completion Report in accordance with 30 T.A.C. § 350.95 within 90 days after the completion of the response action in the approved RAP.

**B. Injunctive relief for violation of the TCAA and Commission rules**

11.4 As shown above, Conner Steel violated the TCAA and Commission rules.

11.5 The State seeks a temporary injunction ordering Conner Steel to comply with the TCAA and Commission rules. Specifically, the State requests an injunction requiring that Conner Steel:

- (1) immediately cease all unauthorized outdoor burning;
- (2) immediately begin adhering to all NSR permit conditions, including storing used acetone and styrene resin waste mixture in sealed containers;
- (3) immediately begin the procedures necessary to obtain authorization for blast cleaning operations or conduct blast cleaning operations in accordance with Permit by Rule requirements;
- (4) immediately begin the procedures necessary to obtain authorization for increased emissions from surface coating activities in the paint booth or conduct those activities in accordance with Permit by Rule requirements; and
- (5) immediately begin generating and maintaining the reports necessary to fully comply with 30 T.A.C. § 106.433;
- (6) immediately cease all activities which lead to unauthorized levels of styrene in the

areas surrounding the facility, including minimizing fugitive emissions from the fiberglass tank manufacturing building;

- (7) immediately cease all unauthorized surface coating activities in the fiberglass tank manufacturing building;
- (8) immediately install filters in the fiberglass tank manufacturing facility that will control particulate matter at 95% efficiency to operate the facility as specified in the permit application; and
- (9) immediately resubmit an application for the a permit to operate its paint booth and for increased emissions from the tank manufacturing facility and respond to the inquiries on the application in accordance with 30 T.A.C. § 116.114(b).

11.6 Upon final trial, the State requests that this Court make the temporary injunction against Conner Steel permanent.

## **12. SIXTH CLAIM: ATTORNEY'S FEES AND COURT COSTS**

12.1 Pursuant to Water Code Section 7.108, the State asks this Court to award the State its reasonable attorney's fees, court costs and reasonable investigative costs incurred in relation to this proceeding. If there is an appeal to the Court of Appeals or to the Supreme Court, the State seeks its additional reasonable attorney's fees and court costs on behalf of the State.

### **PRAYER**

The State of Texas prays for relief against Conner Steel, Ltd. as follows:

1. That Conner Steel, Ltd., be cited to appear and answer herein;
2. That upon notice and hearing, a temporary injunction be granted against Conner Steel, Ltd. as requested above;
3. That upon final trial of this cause, permanent injunctive relief be granted against Conner Steel, Ltd., as requested above;
4. That upon final trial of this cause, the State have a money judgment against Conner Steel,

Ltd. for civil penalties, as stated above, plus interest at the legal rate from the date of judgment until fully paid;

5. That upon final trial of this cause, the State recover a money judgment from Conner Steel, Ltd. for reasonable attorney's fees, reasonable investigative costs, and all of its court costs in this action, plus interest at the legal rate from the date of judgment until fully paid;
6. That HLC, LLC, as general partner of Conner Steel, Ltd., be held jointly and severally liable in any judgment entered against Conner Steel, Ltd.; and
7. That upon final trial of this cause, the State be granted all other relief, general and special, at law and in equity, to which it may show itself justly entitled.

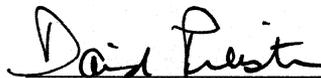
Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

KENT C. SULLIVAN  
First Assistant Attorney General

JEFF L. ROSE  
Deputy First Assistant Attorney General

KAREN W. KORNELL  
Assistant Attorney General  
Chief, Natural Resources Division



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Natural Resources Division  
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ATTORNEYS FOR THE STATE OF TEXAS

AFFIDAVIT

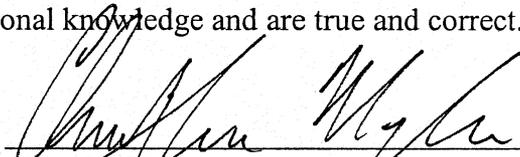
THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared CHRISTOPHER MAYBEN, a person whose identity is known to me. After I administered an oath to him, upon his oath he said:

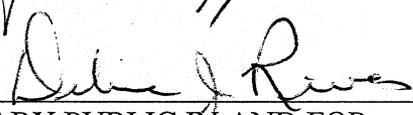
My name is CHRISTOPHER MAYBEN, I am over the age of twenty-one years and of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein:

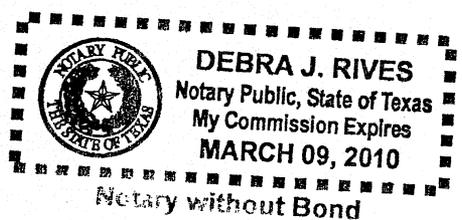
I am employed by the Texas Commission on Environmental Quality as an Environmental Investigator in the Region 8 office of the Texas Commission on Environmental Quality.

I have read the foregoing *Original Petition and Application for Temporary and Permanent Injunctive Relief* and am familiar with the facts alleged. The facts alleged in paragraphs 6.1 to 6.5, 6.8 to 6.21 of the petition are within my personal knowledge and are true and correct.

  
CHRISTOPHER MAYBEN

SUBSCRIBED AND SWORN TO before me on May 1<sup>st</sup>, 2007, to certify which witness may hand and official seal.

  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



AFFIDAVIT

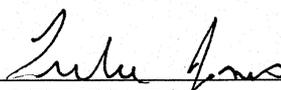
THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared LUKE JONES, a person whose identity is known to me. After I administered an oath to him, upon his oath he said:

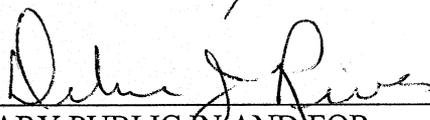
My name is LUKE JONES, I am over the age of twenty-one years and of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein:

I am employed by the Texas Commission on Environmental Quality in the Austin Office of the Texas Commission on Environmental Quality. I was formerly an Environmental Investigator in the Region 8 office of the Texas Commission on Environmental Quality.

I have read the foregoing *Original Petition and Application for Temporary and Permanent Injunctive Relief* and am familiar with the facts alleged. The facts alleged in paragraphs 6.1 to 6.5, 6.22 to 6.23, 6.25, 6.26, and 6.29 of the petition are within my personal knowledge and are true and correct.

  
\_\_\_\_\_  
LUKE JONES

SUBSCRIBED AND SWORN TO before me on May 1<sup>st</sup>, 2007, to certify which witness may hand and official seal.

  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

