

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NUMBER: 2006-0078-MSW-E TCEQ ID NO: RN104688874 ENF ID: 28008
RESPONDENT NAME: JESUS GARCIA

ORDER TYPE:

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> DRY CLEANER REGISTRATION	

SITE WHERE VIOLATION(S) OCCURRED: County Road 410, 3/4 mile west of County Road 206, Falfurrias, Jim Wells County

TYPE OF OPERATION: Unauthorized dump site

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There is one complaint. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: One complaint has been received but the complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 12, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Mike Limos, Enforcement Division, MC 128, (512) 239-5839
TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106
Respondent: Mr. Jesus Garcia, 561 County Road 410, Falfurrias, Texas 78355
Respondent's Attorney: Not represented by counsel.

**RESPONDENT'S NAME: JESUS GARCIA
DOCKET NO.: 2006-0078-MSW-E**

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: June 3, 2005</p> <p>Date(s) of Investigation(s) Relating to this Case: June 7, 2005</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: August 9, 2005 (NOE)</p> <p>Background Facts:</p> <p>The EDPRP was filed on October 9, 2006. The United States Postal Service returned the wrapper sent by certified mail as "refused." The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP. The Respondent failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MSW:</p> <p>Failed to prevent the disposal of municipal solid waste at an unauthorized site [30 TEX. ADMIN. CODE § 330.15(e)].</p>	<p>Total Assessed: \$3,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Due to General Revenue: \$3,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>(1) Immediately, cease to cause, suffer, allow, or permit any additional MSW to be stored, processed, or disposed of at the Site.</p> <p>(2) Within 90 days, remove and properly dispose of all municipal solid waste.</p> <p>(3) Within 105 days, submit written certification to demonstrate compliance.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES		Assigned	02-Jan-2006		
		PCW	17-Jan-2006	Screening	18-Jan-2006
				EPA Due	N/A

RESPONDENT/FACILITY INFORMATION					
Respondent	Jesus Garcia				
Reg. Ent. Ref. No.	RN104688874				
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor Source		

CASE INFORMATION					
Enf./Case ID No.	28008		No. of Violations	1	
Docket No.	2006-0078-MSW-E		Order Type	1660	
Media Program(s)	Municipal Solid Waste		Enf. Coordinator	Edward R. Moderow	
Multi-Media			EC's Team	Enforcement Team 7	
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section						
TOTAL BASE PENALTY (Sum of violation base penalties)					Subtotal 1	\$3,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1						
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.						
Compliance History		0% Enhancement		Subtotals 2, 3, & 7	\$0	
Notes	No adjustment recommended based on compliance history.					
Culpability	No	0% Enhancement		Subtotal 4	\$0	
Notes	Does not meet the culpability criteria.					
Good Faith Effort to Comply		0% Reduction		Subtotal 5	\$0	
	Before NOV	NOV to EDPRP/Settlement Offer				
Extraordinary						
Ordinary						
N/A	X	(mark with a small x)				
Notes	The Respondent has not yet returned to compliance.					
Economic Benefit		0% Enhancement*		Subtotal 6	\$0	
Total EB Amounts	\$395	*Capped at the Total EB \$ Amount				
Approx. Cost of Compliance	\$5,000					
SUM OF SUBTOTALS 1-7					Final Subtotal	\$3,000
OTHER FACTORS AS JUSTICE MAY REQUIRE			0%	Adjustment	\$0	
Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)						
Notes						
					Final Penalty Amount	\$3,000
STATUTORY LIMIT ADJUSTMENT					Final Assessed Penalty	\$3,000
DEFERRAL			0% Reduction	Adjustment	\$0	
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)						
Notes	No deferral offered for non-expedited settlement.					
PAYABLE PENALTY					\$3,000	

Screening Date 18-Jan-2006

Docket No. 2006-0078-MSW-E

PCW

Respondent Jesus Garcia

Policy Revision 2 (September 2002)

Case ID No. 28008

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104688874

Media [Statute] Municipal Solid Waste

Enf. Coordinator Edward R. Moderow

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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 judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment recommended based on compliance history.

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

Screening Date 18-Jan-2006

Docket No. 2006-0078-MSW-E

PCW

Respondent Jesus Garcia

Policy Revision 2 (September 2002)

Case ID No. 28008

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104688874

Media [Statute] Municipal Solid Waste

Enf. Coordinator Edward R. Moderow

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failed to prevent the disposal of municipal solid waste (MSW) at an unauthorized facility. Specifically, the Respondent allowed the disposal of demolition debris, metal debris and concrete with rebar without authorization from the Commission.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	<input checked="" type="checkbox"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input type="text"/>

Violation Base Penalty

Three quarterly events are recommended based on the unauthorized disposal as documented during the 06/07/05 investigation to the 01/18/06 screening.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Jesus Garcia
 Case ID No: 28008
 Reg. Ent. Reference No. RN104688874
 Media [Statute] Municipal Solid Waste
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$5,000	07-Jun-2005		1.6	\$395	n/a	\$395
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to remove and properly dispose of all waste located at the unauthorized facility. The date range is based on the investigation to estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$5,000 TOTAL \$395

Compliance History

Customer/Respondent/Owner-Operator: CN602872301 JESUS GARCIA Classification: AVERAGE Rating: 3.01
Regulated Entity: RN104688874 JIM WELLS CR 410 UNAUTHORIZED Classification: AVERAGE BY Site Rating: 3.01
SITE DEFAULT
ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER UNA455140027
Location: 3/4 MI. W. OF COUNTY ROAD 206 ON COUNTY ROAD 410, Rating Date: 9/1/2005 Repeat Violator: NO
JIM WELLS COUNTY
TCEQ Region: REGION 14 - CORPUS CHRISTI
Date Compliance History Prepared: January 24, 2006
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 24, 2001 to January 24, 2006
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Edward R. Moderow Phone: 512.239.2680

Site Compliance History Components

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
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.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JESUS GARCIA;
RN104688874

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2006-0078-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE § 7.054 and 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 Jesus Garcia ("Mr. Garcia").

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

FINDINGS OF FACT

1. Mr. Garcia owns and operates an unauthorized dump site located on County Road 410, ¾ mile west of County Road 206, in Falfurrias, Jim Wells County, Texas (the "Site").
2. The Facility involves the management and disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on June 7, 2005, a TCEQ Corpus Christi Regional Office investigator documented that Mr. Garcia failed to prevent the disposal of municipal solid waste at an unauthorized site. Specifically, Mr. Garcia allowed at the Site the disposal of demolition debris, including metal debris, and concrete with rebar, without prior authorization from the Commission.
4. Mr. Garcia received notice of the violation on or about August 14, 2005.
5. 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 Jesus Garcia" (the "EDPRP") in the TCEQ Chief Clerk's office on October 9, 2006.

6. By letter dated October 9, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Garcia with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "refused." The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP, provided by the Executive Director. Mr. Garcia failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Garcia is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Garcia failed to prevent the disposal of municipal solid waste at an unauthorized site, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Garcia with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Mr. Garcia failed to file a timely answer to the EDPRP, 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 Mr. Garcia 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 Mr. Garcia for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of three thousand dollars (\$3,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Garcia is assessed an administrative penalty in the amount of three thousand dollars (\$3,000.00) for violations of the Texas Water Code, the Texas Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Garcia's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jesus Garcia; Docket No. 2006-0078-MSW-E" to:

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

2. Mr. Garcia shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Garcia shall cease to cause, suffer, allow, or permit any additional MSW to be stored, processed or disposed of at the Site;
 - b. Within 90 days after the effective date of the Commission Order, Mr. Garcia shall remove and properly dispose of all municipal solid waste located on the Site; and
 - c. Within 105 days after the effective date of the Commission Order, Mr. Garcia shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with ordering provision Nos. 2.a. and b. The certification shall be notarized by a State of Texas Notary Public and 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.”

Mr. Garcia shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and b. to:

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

with a copy to:

Brad Genzer, Waste Section Manager
Corpus Christi Regional Office
NRC Building, Ste. 1200
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Garcia. Mr. Garcia is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Garcia 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, Mr. Garcia's failure to comply is not a violation of this Order. Mr. Garcia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Garcia shall notify the Executive Director within seven days after Mr. Garcia becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Mr. Garcia shall be made in writing to the Executive Director. Extensions are not effective until Mr. Garcia receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. 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 Mr. Garcia if the Executive Director determines that Mr. Garcia has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jesus Garcia
Docket No. 2006-0078-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jesus Garcia” (the “EDPRP”) was filed with the Office of the Chief Clerk on October 9, 2006.

The EDPRP was mailed to Mr. Garcia at his last known address on October 9, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “refused.” The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

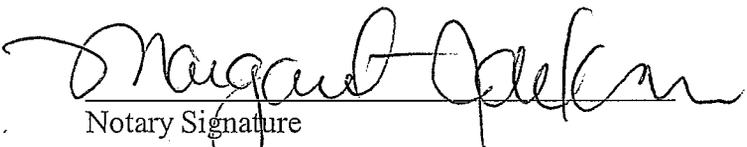
More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP. Mr. Garcia failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 10th day of January, A.D., 2007.



Notary Signature

