

Page 1 of 2

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0112-EAQ-E TCEQ ID: RN105086110 CASE NO.: 32136
RESPONDENT NAME: JOSE J. ESPINOZA

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 3601 County Road 239, Georgetown, Williamson County</p> <p>TYPE OF OPERATION: Limestone quarry</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint has been received. There is no record of additional pending enforcement actions regarding this respondent.</p> <p>INTERESTED PARTIES: 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.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 26, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, Air Enforcement Section, MC R-4, (817) 588-5890 TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929 Respondent: Mr. Jose J. Espinoza, P.O. Box 274, Jarrell, Texas 76537 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: September 13, 2006</p> <p>Dates of Investigation Relating to this Case: October 13, 2006</p> <p>Date of NOE Relating to this Case: December 5, 2006</p> <p>Background Facts: The EDPRP was filed on April 26, 2007. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on May 4, 2007, as evidenced by the signature on the card. The Respondent failed to respond 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>WQ:</p> <p>Failed to submit an Edwards Aquifer Protection Plan for Commission approval prior to conducting quarry activities in the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$14,300</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$14,300</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 type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Respondent no longer owns the Facility.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	11-Dec-2006		
	PCW	14-Aug-2007	Screening	8-Jan-2007
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Jose J. Espinoza		
Reg. Ent. Ref. No.	RN105086110		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	32136	No. of Violations	1
Docket No.	2007-0112-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Laurie Eaves
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$13,000
---	-------------------	-----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	10% Enhancement	Subtotals 2, 3, & 7
		\$1,300

Notes: Enhancement due to Poor Performer classification.

Culpability	No	0% Enhancement	Subtotal 4	\$0
-------------	----	----------------	-------------------	------------

Notes: Respondent 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 x)

Notes: Respondent does not meet good faith criteria.

Total EB Amounts	\$10,000	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$10,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$14,300
-----------------------------	-----------------------	-----------------

OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
---	--	-------------------	------------

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$14,300
-----------------------------	-----------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$14,300
-----------------------------------	-------------------------------	-----------------

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	\$14,300
------------------------	-----------------

Screening Date 8-Jan-2007

Docket No. 2007-0112-EAQ-E

PCW

Respondent Jose J. Espinoza

Policy Revision 2 (September 2002)

Case ID No. 32136

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105086110

Media [Statute] Edwards Aquifer

Enf. Coordinator Laurie Eaves

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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement due to Poor Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 8-Jan-2007

Docket No. 2007-0112-EAQ-E

PCW

Respondent Jose J. Espinoza

Policy Revision 2 (September 2002)

Case ID No. 32136

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105086110

Media [Statute] Edwards Aquifer

Enf. Coordinator Laurie Eaves

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 213.4(a)(1)

Violation Description

Failed to submit an Edwards Aquifer Protection Plan for Commission approval prior to conducting quarry activities on the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on October 13, 2006.

Base Penalty

\$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed protective levels.

Adjustment

\$9,000

\$1,000

Violation Events

Number of Violation Events 13

13 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty

\$13,000

Thirteen single events are recommended from the October 13, 2006 investigation date to the October 26, 2006 sale of property date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10,000

Violation Final Penalty Total

\$14,300

This violation Final Assessed Penalty (adjusted for limits)

\$14,300

Economic Benefit Worksheet

Respondent Jose J. Espinoza
 Case ID No. 32136
 Reg. Ent. Reference No. RN105086110
 Media Edwards Aquifer
 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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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)	\$10,000	13-Oct-2006	26-Oct-2006	0.0	\$0	\$10,000	\$10,000

Notes for AVOIDED costs

The avoided costs include the amount to prepare, submit, and receive approval of an Edwards Aquifer Protection Plan, including all associated fees, calculated from the date of the investigation to the date the property was sold.

Approx. Cost of Compliance

\$10,000

TOTAL

\$10,000

Compliance History

Customer/Respondent/Owner-Operator: CN601289333 ESPINOZA, JOSE J Classification: POOR Rating: 118.44
Regulated Entity: RN105086110 AGUADO STONE 4 Classification: AVERAGE BY Site Rating: 3.01
DEFAULT
ID Number(s):
Location: 3601 CR 239 GEORGETOWN, WILLIAMSON COUNTY
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: December 19, 2006
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: December 19, 2001 to December 19, 2006
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Brent Hurta Phone: 512-239-6589

Site Compliance History Components

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 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.)
1 12/05/2006 (532494)
 - 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
JOSE J. ESPINOZA;
RN105086110

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-0112-EAQ-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 ch. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Jose J. Espinoza ("Mr. Espinoza").

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

FINDINGS OF FACT

1. On the date of the investigation, Mr. Espinoza owned a limestone quarry consisting of approximately 200.87 acres located at 3601 County Road 239, Georgetown, Williamson County, Texas (the "Facility").
2. The Facility is regulated under the Edwards Aquifer rules found in 30 TEX. ADMIN. CODE ch. 213 and is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. During an investigation conducted on October 13, 2006, a TCEQ Austin Regional Office investigator documented that Mr. Espinoza failed to submit an Edwards Aquifer Protection Plan for Commission approval prior to conducting quarry activities in the Edwards Aquifer Recharge Zone.
4. Mr. Espinoza received notice of the violation on or about December 10, 2006.
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 Jose J. Espinoza" (the "EDPRP") in the TCEQ Chief Clerk's office on April 26, 2007.

6. By letter dated April 26, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Espinoza with notice of the EDPRP. According to the return receipt "green card," Mr. Espinoza received notice of the EDPRP on May 4, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Espinoza received notice of the EDPRP, provided by the Executive Director. Mr. Espinoza 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. Espinoza is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Espinoza failed to submit an Edwards Aquifer Protection Plan for Commission approval prior to conducting quarry activities in the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Espinoza with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Espinoza 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. Espinoza 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. Espinoza for violations of the Texas Water 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 fourteen thousand three hundred dollars (\$14,300.00) 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. Espinoza is assessed an administrative penalty in the amount of fourteen thousand three hundred dollars (\$14,300.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Mr. Espinoza'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: Jose J. Espinoza; Docket No. 2007-0112-EAQ-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. All relief not expressly granted in this Order is denied.
3. If Mr. Espinoza 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. Espinoza's failure to comply is not a violation of this Order. Mr. Espinoza shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Espinoza shall notify the Executive Director within seven days after Mr. Espinoza becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. 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. Espinoza shall be made in writing to the Executive Director. Extensions are not effective until Mr. Espinoza receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. 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. Espinoza if the Executive Director determines that Mr. Espinoza has not complied with one or more of the terms or conditions in this Order.
6. 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.
7. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

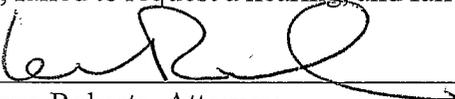
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“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 Jose J. Espinoza” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 26, 2007.

The EDPRP was mailed to Mr. Espinoza at his last known address on April 26, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Espinoza received notice of the EDPRP on May 4, 2007, as evidenced by the signature on the card.

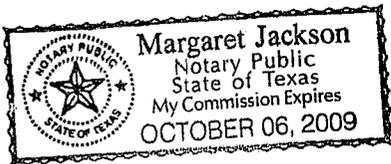
More than 20 days have elapsed since Mr. Espinoza received notice of the EDPRP. Mr. Espinoza failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

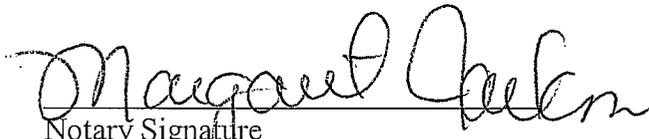


Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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 17th day of October, A.D., 2007.





Notary Signature