

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0123-MLM-E TCEQ ID: RN105076905 CASE NO.: 32288
RESPONDENT NAME: HEBERT CONSTRUCTION SERVICES, INC.

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

SITE WHERE VIOLATION(S) OCCURRED: 404 Cole Avenue, Saginaw, Tarrant County

TYPE OF OPERATION: construction and demolition debris removal company

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: 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 November 12, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Shawn Slack, Litigation Division, MC 175, (512) 239-0063
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492

TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

Respondent: Ms. Deborah L. Barton, Registered Agent, Hebert Construction Services Inc., 404 Cole Avenue, Saginaw, Texas, 76179

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint</p> <p><input checked="" type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: September 25, 2006</p> <p>Date of NOE Relating to this Case: November 17, 2006</p> <p>Background Facts: The EDPRP was sent on June 25, 2007, via certified mail, return receipt requested, and via first class mail, postage pre-paid. The Respondent received notice of the EDPRP on or about June 30, 2007. The Respondent has not filed an answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MLM</p> <p>Failed to prevent the transportation of industrial and municipal solid waste for disposal at an unauthorized facility [30 TEX. ADMIN. CODE §§ 330.15(c) and 335.4].</p>	<p>Total Assessed: \$2,000</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$2,000</p> <p>This is a Default Order.</p> <p>The Respondent has not 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>Technical Requirement(s)</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease transporting industrial and municipal solid waste for disposal at an unauthorized facility. 2. Within 10 days, develop and implement written procedures to ensure that all wastes transported by Hebert Construction are transported to authorized facilities. 3. Within 25 days, submit written certification notarized by a State of Texas Notary Public and include detailed supporting documentation including photographs, receipts, and or other records to demonstrate compliance with Ordering Provisions 1 and 2.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	27-Nov-2006	Screening	19-Jan-2007	EPA Due	
	PCW	1-May-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Hebert Construction Services, Inc.
Reg. Ent. Ref. No.	RN105076905
Facility/Site Region	4 - Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	32288	No. of Violations	1
Docket No.	2007-0123-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Michael Meyer
Multi-Media	Industrial Solid Waste	EC's Team	Enforcement Team 8
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes No previous NOVs or orders were issued to the Respondent during the past five years.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)
Notes	The Respondent does meet the good faith criteria.	

	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$25	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$2,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,000
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DEFERRAL		Reduction	Adjustment
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral not offered for non-expedited cases.

PAYABLE PENALTY	\$2,000
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Screening Date 19-Jan-2007

Docket No. 2007-0123-MLM-E

PCW

Respondent Hebert Construction Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32288

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105076905

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

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)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No previous NOVs or orders were issued to the Respondent during the past five years.

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

Screening Date 19-Jan-2007

Docket No. 2007-0123-MLM-E

PCW

Respondent Hebert Construction Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32288

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105076905

Media [Statute] Municipal Solid Waste

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 330.15(c) and 335.4

Violation Description

Failed to prevent the transportation of industrial and municipal solid waste for disposal at an unauthorized facility, as documented during an investigation conducted on September 25, 2006. Specifically, the investigator observed a trailer truck containing approximately five cubic yards of industrial and municipal solid waste transported by Hebert Construction Services, Inc. being disposed of at an unauthorized landfill. The waste included dirt, concrete, plastic and metal piping, wood scraps, and foundry sand from Plaza de las Americas (formerly Texas Steel).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment was exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

116 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended from the September 25, 2006 investigation to the January 19, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent: Hebert Construction Services, Inc.
Case ID No.: 32288
Reg. Ent. Reference No.: RN105076905
Media: 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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	25-Sep-2006	30-Sep-2007	1.0	\$25	n/a	\$25

Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure that all wastes are transported to authorized facilities. The Date Required is the September 25, 2006 investigation date and the Final Date is the projected compliance date.

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

\$500

TOTAL

\$25

Compliance History

Customer/Respondent/Owner-Operator:	CN603104258	Hebert Construction Services, Inc.	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN105076905	HEBERT CONSTRUCTION SERVICES	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	404 COLE AVE, SAGINAW, TX, 76179		Rating Date: September 01 06 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	February 07, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 08, 2002 to February 07, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Michael Meyer Phone: (512) 239-4492

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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 11/20/2006 (515831)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- 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
HEBERT CONSTRUCTION
SERVICES, INC.;
RN105076905

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-0123-MLM-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, 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 Hebert Construction Services, Inc. ("Hebert").

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

FINDINGS OF FACT

1. Hebert owns and operates a construction and demoliton debris removal company located at 404 Cole Avenue in Saginaw, Tarrant County, Texas (the "Facility").
2. The Facility involves the management and/or disposal of industrial and municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on September 25, 2006, a TCEQ Dallas/Fort Worth Regional investigator documented that Hebert failed to prevent the transportation of industrial and municipal solid waste for disposal at an unauthorized facility. Specifically, the investigator observed a trailer truck containing approximately five cubic yards of industrial and municipal solid waste transported by Hebert being disposed of at an unauthorized landfill. The waste included dirt, concrete, plastic and metal piping, wood scraps, and foundry sand from Plaza de las Americas (formerly Texas Steel).
4. Hebert received notice of the violations on or about November 22, 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 and Requiring Certain Actions of Hebert Construction Services, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on June 25, 2007.
6. By letter dated June 25, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Hebert with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Hebert received notice of the EDPRP.
7. More than 20 days have elapsed since Hebert received notice of the EDPRP, provided by the Executive Director. Hebert 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, Hebert is subject to the jurisdiction of the TCEQ pursuant 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, Hebert failed to prevent the transportation of industrial and municipal solid waste for disposal at an unauthorized facility, in violation of 30 TEX. ADMIN. CODE §§ 330.15(c) and 335.4.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Hebert 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, Hebert has 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 Hebert 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 Hebert 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 two thousand dollars (\$2,000.00) 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. Hebert is assessed an administrative penalty in the amount of two thousand dollars (\$2,000.00) for violations of rules of the TCEQ. The payment of this administrative penalty and Hebert'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: Hebert Construction Services, Inc.; Docket No. 2007-0123-MLM-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. Hebert shall undertake the following technical requirements:
 - a. Immediately upon the effective date of the Commission Order, Hebert shall cease transporting industrial and municipal solid waste for disposal at an unauthorized facility, in accordance with TEX. ADMIN. CODE §§ 330.15(c) and 335.4.

- b. Within 10 days after the effective date of the Commission Order, Hebert shall develop and implement written procedures to ensure that all wastes transported by Hebert Construction are transported to authorized facilities.
- c. Within 25 days after the effective date of the Commission Order, Hebert shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.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."

The certification shall be submitted 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:

Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Hebert. Hebert is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

5. If Hebert 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, Hebert's failure to comply is not a violation of this Order. Hebert shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Hebert shall notify the Executive Director within seven days after Hebert 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 Hebert shall be made in writing to the Executive Director. Extensions are not effective until Hebert 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 Hebert if the Executive Director determines that Hebert 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.

Hebert Construction Services, Inc.
Docket No. 2007-0123-MLM-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHAWN A. SLACK

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Shawn A. Slack. 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, I 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 Hebert Construction Services, Inc.” (the “EDPRP”) with the Office of the Chief Clerk on June 25, 2007.

I sent the EDPRP to Hebert at its last known address on June 25, 2007, 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 “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

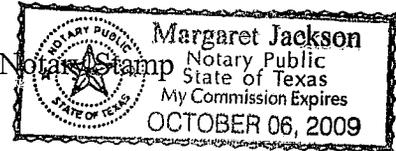
More than 20 days have elapsed since Hebert received notice of the EDPRP. Hebert failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.



Shawn A. Slack
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 7 day of August A.D., 2007.





Notary Signature