

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0642-MSW-E TCEQ ID NO.: RN104461793 CASE NO.: 33303
RESPONDENT NAME: ARMANDO ALVAREZ

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 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: 3101 North 77, Harlingen, Cameron County

TYPE OF OPERATION: Unauthorized disposal area

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There are no other pending enforcement actions regarding this facility.

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 February 4, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
 TCEQ Enforcement Coordinator: Ms. Dana Shuler, Waste Enforcement Section, MC 219, (512) 239-2505
 TCEQ Regional Contact: Mr. David Ramirez, Harlingen Regional Office, MC R-15, (956) 430-6048
 Respondent: Mr. Armando Alvarez, P.O. Box 532023, Harlingen, Texas 78553
 Respondent's Attorney: Not represented by counsel.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: November 10, 2004 to November 23, 2004 February 7, 2007</p> <p>Dates of NOVs/NOEs Relating to this Case: January 10, 2005 (NOV) April 4, 2007 (NOE)</p> <p>Background Facts:</p> <p>On September 6, 2007, the Executive Director filed the EDPRP against the Respondent. By letter dated September 6, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served the Respondent 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 the Respondent received notice of the EDPRP.</p> <p>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 dispose of municipal solid waste at an authorized facility [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$2,625</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$2,625</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 Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease disposing any additional waste at the Site. 2. Within 120 days ensure that all unauthorized waste at the Site is removed and properly disposed of at an authorized facility. 3. Within 135 days, submit written, notarized certification and include detailed supporting documentation including receipts, and/or other records to demonstrate compliance with the above Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	9-Apr-2007	Screening	25-Apr-2007	EPA Due	
	PCW	25-Jul-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Armando Alvarez
Reg. Ent. Ref. No.	RN104461793
Facility/Site Region	15 - Harlingen
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	33303	No. of Violations	1	
Docket No.	2007-0642-MSW-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Dana Shuler	
Multi-Media		EC's Team	EnforcementTeam 8	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1: \$2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Subtotals 2, 3, & 7: \$125

5% Enhancement

Notes: The Respondent received one NOV with the same or similar violation at the site in the past five years.

Culpability Subtotal 4: \$0

0% Enhancement

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Subtotal 5: \$0

0% Reduction

Before NOV NOV to EDRP/Settlement Offer

Extraordinary

Ordinary

N/A X (mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts Subtotal 6: \$0

0% Enhancement*

Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal: \$2,625

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: \$2,625

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty: \$2,625

DEFERRAL Adjustment: \$0

0% Reduction

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 settlement

PAYABLE PENALTY \$2,625

Screening Date 25-Apr-2007

Docket No. 2007-0642-MSW-E

PCW

Respondent Armando Alvarez

Policy Revision 2 (September 2002)

Case ID No. 33303

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104461793

Media [Statute] Municipal Solid Waste

Enf. Coordinator Dana Shuler

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)	1	5%
	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) 5%

>> 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

The Respondent received one NOV with the same or similar violation at the site in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 25-Apr-2007

Docket No. 2007-0642-MSW-E

PCW

Respondent Armando Alvarez

Policy Revision 2 (September 2002)

Case ID No. 33303

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104461793

Media [Statute] Municipal Solid Waste

Enf. Coordinator Dana Shuler

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 330.15(c)

Violation Description

Failed to dispose of municipal solid waste ("MSW") at an authorized facility, as documented during an investigation conducted on February 7, 2007. Specifically, the Respondent disposed of approximately 3,000 cubic yards of MSW, including construction/demolition and incidental MSW, cans, used tires, and other wastes at the Site.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty

One quarterly event is recommended from the February 7, 2007 investigation date to the April 25, 2007 screening date.

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: Armando Alvarez

Case ID No. 33303

Reg. Ent. Reference No. RN104461793

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
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	\$39,000	7-Feb-2007	4-Mar-2008	1.1	\$2,089	n/a	\$2,089
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of 3,000 cubic yards of MSW (\$13 per cubic yard). Date Required is the investigation date and the Final Date is the 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

\$39,000

TOTAL

\$2,089

Compliance History

Customer/Respondent/Owner-Operator:	CN602745861 ALVAREZ, ARMANDO	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN104461793 ARMANDO ALVAREZ PROPERTY	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER		455150114
Location:	3101 North 77, Harlingen, Texas: Legal Description of property in Harlingen, Texas: BISHOP CAMPBELL LANDS		
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	April 24, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 24, 2002 to April 24, 2007		

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

Name: Dana Shuler Phone: (512) 239-2505

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 01/10/2005 (341967)
 - 2 04/05/2007 (436321)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 01/10/2005 (341967)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.5(a)[G]
 - Description: Failure to prevent the storage, disposal or transfer of municipal solid waste at an unauthorized site or facility.
 - 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
ARMANDO ALVAREZ,
RN104461793**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2007-0642-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 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 Armando Alvarez ("Mr. Alvarez").

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

FINDINGS OF FACT

1. Mr. Alvarez owns and operates an unauthorized disposal area at 3101 North 77 in Harlingen, Cameron County, Texas (the "Site").
2. The Site involves or involved the management and disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection conducted on February 7, 2007, a TCEQ Harlingen Regional Office investigator documented that Mr. Alvarez failed to dispose of municipal solid waste at an authorized facility. Specifically, Mr. Alvarez disposed of approximately 3,000 cubic yards of municipal solid waste, including construction/demolition and incidental municipal solid waste, cans, used tires, and other wastes at the Site.
4. Mr. Alvarez received notice of the violation on or about April 9, 2007.
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 Armando Alvarez" (the "EDPRP") in the TCEQ Chief Clerk's office on September 6, 2007.

6. By letter dated September 6, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Alvarez 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 Mr. Alvarez received notice of the EDPRP.
7. More than 20 days have elapsed since received notice of the EDPRP, provided by the Executive Director. Mr. Alvarez 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. Alvarez 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. Alvarez violated 30 TEX. ADMIN. CODE § 330.15(c) by failing to dispose of municipal solid waste at an authorized facility. Specifically, Mr. Alvarez disposed of approximately 3,000 cubic yards of municipal solid waste, including construction/demolition and incidental municipal solid waste, cans, used tires, and other wastes at the Site.
3. As evidenced by Finding of Fact No. 6., the Executive Director has timely served Mr. Alvarez 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. Alvarez 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 Mr. Alvarez 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. Alvarez 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 Six Hundred Twenty-Five Dollars (\$2,625.00) 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. Alvarez is assessed an administrative penalty in the amount of Two Thousand Six Hundred Twenty-Five Dollars (\$2,625.00) for violations of TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and rules of the TCEQ. The payment of this administrative penalty and Mr. Alvarez'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: Armando Alvarez; Docket No. 2007-0642-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. Alvarez shall undertake the following technical requirements:
 - a. Immediately upon the effective date of the Commission Order, cease disposing any additional waste at the Site;
 - b. Within 120 days after the effective date of the Commission Order, ensure that all unauthorized waste at the Site is removed and properly disposed of at an authorized facility;

- c. Within 135 days after the effective date of the Commission Order, 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 include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

Waste Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Gary K. Shiu. 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 Armando Alvarez” (the “EDPRP”) with the Office of the Chief Clerk on September 6, 2007.

I sent the EDPRP to Mr. Alvarez at its his last known address on September 6, 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 Mr. Alvarez received notice of the EDPRP. Mr. Alvarez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

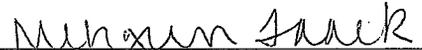


Gary K. Shiu
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, 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 18th day of December, A.D., 2007.

 Mehgan Taack
Notary Public
State of Texas
My Commission Expires
April 25, 2011



Notary Signature