EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1489-WOC-E TCEQ ID: RN104954961 CASE NO.: 36523
RESPONDENT NAME: JAY L. HUTCHINS

ORDER TYPE:		
__1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
X FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	X OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Two miles east of the intersection of State Highway 36 and Farm-to-Market Road 1476, Comanche County

TYPE OF OPERATION: Wastewater treatment plant

SMALL BUSINESS: X 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 expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on June 15, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Epifanio Villarreal, Water Enforcement Section, MC R-14, (361) 825-3425
TCEQ Regional Contact: Mr. Cliff Moore, Abilene Regional Office, MC R-3, (325) 698-6115
Respondent: Mr. Jay L. Hutchins, 171 County Road 4127, Meridian, Texas 76665
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** June 17, 2008 **Date of NOE Relating to this Case:** June 18, 2008 **Background Facts:** The EDPRP was filed on December 17, 2008 and mailed to the Respondent 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 "not deliverable as addressed." By letter dated January 30, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hutchins 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. The EDFARP was filed on February 20, 2009 and mailed to the Respondent via certified mail, return receipt request, 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 that the Respondent received notice of the EDFARP. **Current Compliance Status:** The Respondent is no longer operating the facility. WOC: Failed to obtain a wastewater treatment operator Class "C" license prior to performing activities as a wastewater treatment operator [30 TEX. ADMIN. CODE §§ 30.5(a) and 30.331(b) and TEX. WATER CODE §§ 26.0301 AND 37.003].	**Initial Calculated Penalty:** $1,367 **Total Assessed:** $1,367 **Total Deferred:** $0 ___ Expedited Order ___ Financial Inability to Pay ___ SEP Conditional Offset **Total Due to General Revenue:** $1,367 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. **Site Compliance History Classification** n/a **Person Compliance History Classification** n/a **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	The Executive Director recognizes that the Respondent is no longer operating the Facility.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

TCEQ

DATES					
Assigned	25-Aug-2008				
PCW	24-Nov-2008	Screening	15-Sep-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Jay L. Hutchins		
Reg. Ent. Ref. No.	RN104954961		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36523	No. of Violations	1
Docket No.	2008-1489-WOC-E	Order Type	1660
Media Program(s)	All Occupational Licenses	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Epifanio Villarreal
		EC's Team	Enforcement Team 2

Admin. Penalty $ Limit Minimum $0 Maximum $2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $1,250

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: No adjustment is recommended due to no compliance history.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $0

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $117
Approx. Cost of Compliance $111

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,250

OTHER FACTORS AS JUSTICE MAY REQUIRE 9.4% — *Adjustment* $117

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance.

Final Penalty Amount $1,367

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,367

DEFERRAL 0.0% Reduction — *Adjustment* $0

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY $1,367

Screening Date 15-Sep-2008 **Docket No.** 2008-1489-WOC-E **PCW**

Respondent Jay L. Hutchins *Policy Revision 2 (September 2002)*

Case ID No. 36523 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN104954961

Media [Statute] All Occupational Licenses

Enf. Coordinator Epifanio Villarreal

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)**

N/A ***Adjustment Percentage (Subtotal 3)*** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A ***Adjustment Percentage (Subtotal 7)*** 0%

>> **Compliance History Summary**

Compliance History Notes No adjustment is recommended due to no compliance history.

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

Screening Date 15-Sep-2008 **Docket No.** 2008-1489-WOC-E **PCW**

Respondent Jay L. Hutchins *Policy Revision 2 (September 2002)*

Case ID No. 36523 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN104954961

Media [Statute] All Occupational Licenses

Enf. Coordinator Epifanio Villarreal

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a), 30.331(b), and Tex. Water Code §§ 26.0301 and 37.003

Violation Description Failed to obtain a wastewater treatment operator Class "C" license prior to performing activities as a wastewater treatment operator. Specifically, at the time of the investigation, it was documented that the Respondent was operating the City of Gustine's wastewater treatment plant without a minimum of a Class "C" wastewater treatment operator license.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failing to have the required license to operate the wastewater treatment plant could result in improper operation of the plant and improper treatment of wastewater which could expose human health or the environment to significant amounts of pollutants that exceed levels protective of human health.

Adjustment $1,875

$625

Violation Events

Number of Violation Events 2 | 38 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,250

Two monthly events are recommended, calculated from the date of the investigation, June 17, 2008, to the date of compliance, July 25, 2008.

Good Faith Efforts to Comply

0.0% Reduction $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal $1,250

Economic Benefit (EB) for this violation

Estimated EB Amount $117

Statutory Limit Test

Violation Final Penalty Total $1,367

This violation Final Assessed Penalty (adjusted for limits) $1,367

Economic Benefit Worksheet

Respondent Jay L. Hutchins
Case ID No. 36523
Reg. Ent. Reference No. RN104954961
Media All Occupational Licenses
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
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)	$111	17-Jun-2008	25-Jul-2008	1.02	$6	$111	$117
Notes for AVOIDED costs	The avoided cost includes the amount to apply for and obtain a Class "C" wastewater treatment operator license, calculated from the date of the investigation to the date of compliance.						

Approx. Cost of Compliance: $111

TOTAL: $117

Compliance History

Customer/Respondent/Owner-Operator:	CN603036716	HUTCHINS, JAY L	Classification:	Rating:
Regulated Entity:	RN104954961	HUTCHINS, JAY L	Classification:	Site Rating:
ID Number(s):	WATER LICENSING		LICENSE	WO0020085
	ON SITE SEWAGE FACILITY LICENSING		LICENSE	OS0026457
Location:	171 COUNTY ROAD 4127, MERIDIAN, BOSQUE COUNTY, TEXAS			
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	September 15, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 15, 2003 to September 15, 2008			

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

Name: Epi Villarreal Phone: 361-825-3425

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 08/16/2008 (683695)

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 JAY L. HUTCHINS; RN104954961	§ § § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2008-1489-WOC-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7, 26 and 37 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 Jay L. Hutchins ("Mr. Hutchins").

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

FINDINGS OF FACT

1. Mr. Hutchins operated a wastewater treatment plant located at approximately two miles east of the intersection of State Highway 36 and Farm-to-Market Road 1476 in Comanche County, Texas (the "Facility").

2. During an investigation conducted on June 17, 2008, a TCEQ Abilene Regional Office investigator documented that Mr. Hutchins failed to obtain a wastewater treatment operator Class "C" license prior to performing activities as a wastewater treatment operator. Specifically, at the time of the investigation, it was documented that Mr. Hutchins was operating the City of Gustine's wastewater treatment plant without a minimum of a Class "C" wastewater treatment operator license.

3. Mr. Hutchins received notice of the violation on or about June 23, 2008.

4. The Executive Director recognizes that Mr. Hutchins is no longer operating the Facility.

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 Jay L. Hutchins" (the "EDPRP") in the TCEQ Chief Clerk's office on December 17, 2008.

6. By letters dated December 17, 2008 and January 30, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hutchins with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail dated December 17, 2008 as "not deliverable as addressed." The United States Postal Service returned the wrapper sent by certified mail dated January 30, 2009 as "unclaimed." The first class mail has not been returned, indicating that Mr. Hutchins received notice of the EDPRP.

7. More than 20 days have elapsed since Mr. Hutchins received notice of the EDPRP, provided by the Executive Director. Mr. Hutchins failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Jay L. Hutchins" (the "EDFARP") in the TCEQ Chief Clerk's office on February 20, 2009.

9. By letter dated February 20, 2009, sent via certified mail, return receipt requested, via first class mail, postage prepaid, and via electronic mail, the Executive Director served Mr. Hutchins with notice of the EDFARP. 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. Hutchins received notice of the EDFARP.

10. More than 20 days have elapsed since Mr. Hutchins received notice of the EDFARP, provided by the Executive Director. Mr. Hutchins failed to file an answer to the EDFARP, 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. Hutchins is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7, 26 and 37 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3, Mr. Hutchins failed to obtain a wastewater treatment operator Class "C" license prior to performing activities as a wastewater treatment operator, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 30.331(b) and TEX. WATER CODE §§ 26.0301 and 37.003.

3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Hutchins 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. Hutchins 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. Hutchins and assess the penalty recommended by the Executive Director.

5. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served Mr. Hutchins with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

6. As evidenced by Finding of Fact No. 10, Mr. Hutchins failed to file a timely answer to the EDFARP 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. Hutchins and assess the penalty recommended by the Executive Director.

7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Hutchins 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.

8. An administrative penalty in the amount of one thousand three hundred sixty-seven dollars ($1,367.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. 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. Hutchins is assessed an administrative penalty in the amount of one thousand three hundred sixty-seven dollars ($1,367.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Mr. Hutchins'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: Jay L. Hutchins; Docket No. 2008-1489-WOC-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. The provisions of this Order shall apply to and be binding upon Mr. Hutchins. Mr. Hutchins is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

4. If Mr. Hutchins 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. Hutchins's failure to comply is not a violation of this Order. Mr. Hutchins shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hutchins shall notify the Executive Director within seven days after Mr. Hutchins becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. 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. Hutchins shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hutchins receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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

7. 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.

8. 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 TOMMY TUCKER HENSON II

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Tommy Tucker Henson II. 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 Jay L. Hutchins" (the "EDPRP") was filed with the Office of the Chief Clerk on December 17, 2008.

The EDPRP was mailed to Mr. Hutchins at his last known address on December 17, 2008 and January 30, 2009, 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 dated December 17, 2008 as "not deliverable as addressed." The United States Postal Service returned the wrapper sent by certified mail dated January 30, 2009 as "unclaimed." The first class mail has not been returned, indicating that Mr. Hutchins received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Jay L. Hutchins" (the "EDFARP") was filed with the Office of the Chief Clerk on February 20, 2009.

The EDFARP was mailed to Mr. Hutchins at his last known address on February 20, 2009, 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 that Mr. Hutchins received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Tommy Tucker Henson II, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tommy Tucker Henson II, 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 9th day of APRIL, A.D., 2009.

Margaret A. Wilson
Notary Public
State of Texas
My Commission Expires
MAY 15, 2010

Margaret Wilson
Notary Signature