



VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      None</p> <p><b>Date of Investigation Relating to this Case:</b>                      October 17, 2009</p> <p><b>Date of NOE Relating to this Case:</b>                      November 9, 2009</p> <p><b>Background Facts:</b>                      The EDRP was filed March 26, 2009, and mailed to the Respondent 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 EDRP on April 1, 2009, as evidenced by the signature on the card. The Respondent failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                      PSW Real Estate received approval of a WPAP for the Site on November 14, 2008.</p> <p><b>EAQ:</b>                      Failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p><b>Total Assessed:</b> \$5,000</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$5,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p>The Executive Director recognizes that on November 14, 2008, PSW Real Estate received approval of a WPAP for the Site.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	17-Nov-2008			
	PCW	11-Feb-2009	Screening	8-Dec-2008	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>					
Respondent	PSW REAL ESTATE, LLC				
Reg. Ent. Ref. No.	RN105619837				
Facility/Site Region	11-Austin	Major/Minor Source	Minor		

<b>CASE INFORMATION</b>					
Enf./Case ID No.	36898	No. of Violations	1		
Docket No.	2008-1884-EAQ-E	Order Type	1660		
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Lanae Foard		
		EC's Team	Enforcement Team 1		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$5,000</b>
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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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No adjustment due to average performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$15  
 Approx. Cost of Compliance: \$4,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$5,000</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$5,000**

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$5,000</b>
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	<b>\$0</b>
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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 settlement.

<b>PAYABLE PENALTY</b>	<b>\$5,000</b>
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**Screening Date** 8-Dec-2008

**Docket No.** 2008-1884-EAQ-E

**PCW**

**Respondent** PSW REAL ESTATE, LLC

Policy Revision 2 (September 2002)

**Case ID No.** 36898

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105619837

**Media [Statute]** Edwards Aquifer

**Enf. Coordinator** Lanae Foard

**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 judgments 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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 0%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

No adjustment due to average performer classification.

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

<b>Screening Date</b> 8-Dec-2008	<b>Docket No.</b> 2008-1884-EAQ-E	<b>PCW</b>	
<b>Respondent</b> PSW REAL ESTATE, LLC	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 36898	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN105619837			
<b>Media [Statute]</b> Edwards Aquifer			
<b>Enf. Coordinator</b> Lanae Foard			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 213.4(a)(1)		
<b>Violation Description</b>	Failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on October 17, 2008. Specifically, the investigator observed that significant soil disturbing activity had occurred on the Site and all of the existing impervious cover including two houses and driveways had been demolished and cleared, totaling approximately 0.56 acres.		
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
<b>OR</b>	<b>Release</b>	<b>Harm</b>	
		Major    Moderate    Minor	
	Actual	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
	Potential	<input type="text"/>	
<b>&gt;&gt; Programmatic Matrix</b>			
	Falsification	Major    Moderate    Minor	
	<input type="text"/>	x	<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of rule requirement not met.		
<b>Adjustment</b>		<input type="text" value="\$9,000"/>	
			<input type="text" value="\$1,000"/>
<b>Violation Events</b>			
<b>Number of Violation Events</b> <input type="text" value="5"/>		<input type="text" value="29"/> <b>Number of violation days</b>	
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>
	weekly	x	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
Five weekly events are recommended from the date of investigation (October 17, 2008) to the date of compliance (November 14, 2008).			
<b>Good Faith Efforts to Comply</b>		<b>0.0% Reduction</b>	<input type="text" value="\$0"/>
	Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	x	(mark with x)	
<b>Notes</b>	No good faith reduction is offered when a default order is recommended.		
<b>Violation Subtotal</b>		<input type="text" value="\$5,000"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b> <input type="text" value="\$15"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$5,000"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$5,000"/>	

## Economic Benefit Worksheet

**Respondent** PSW REAL ESTATE, LLC

**Case ID No.** 36898

**Reg. Ent. Reference No.** RN105619837

**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
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No commas or \$

### 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	\$4,000	17-Oct-2008	14-Nov-2008	0.08	\$15	n/a	\$15
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost reflects the amount to prepare and submit a WPAP. The date required is the investigation date and the final date is the date of compliance.

### 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)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$4,000

**TOTAL**

\$15

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603405606 PSW REAL ESTATE, LLC Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN105619837 MELRIDGE SUBDIVISION Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT  
ID Number(s): EDWARDS AQUIFER REGISTRATION 11-08091002  
Location: Approximately 150 feet southeast of the intersection of Rabb Road and Melridge Place, Austin, Travis County, Texas  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: December 01, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: December 01, 2003 to December 01, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Lanae Foard Phone: 239 - 2554

## 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
6. Rating Date: 9/1/2008 Repeat Violator: NO

## 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 11/13/2008 (704679)
  - 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  
PSW REAL ESTATE, L.L.C.;  
RN105619837**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2008-1884-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 chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty against the respondent. The respondent made the subject of this Order is PSW Real Estate, L.L.C. ("PSW Real Estate").

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

**FINDINGS OF FACT**

1. PSW Real Estate owns and operates a single family residential development located at 150 feet southwest of the intersection of Rabb Road and Melridge Place, Travis County, Texas (the "Site").
2. During an investigation conducted on October 17, 2008, a TCEQ Austin Regional Office investigator documented that PSW Real Estate failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed that significant soil disturbing activity had occurred on the Site and all of the existing impervious cover including two houses and driveways had been demolished and cleared, totaling approximately 0.56 acres.
3. PSW Real Estate received notice of the violation on or about November 14, 2008.
4. The Executive Director recognizes that on November 14, 2008, PSW Real Estate received approval of a WPAP for the Site.
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 PSW Real Estate, L.L.C.” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 26, 2009.

6. By letter dated March 26, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served PSW Real Estate with notice of the EDPRP. According to the return receipt “green card,” PSW Real Estate received notice of the EDPRP on April 1, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since PSW Real Estate received notice of the EDPRP, provided by the Executive Director. PSW Real Estate 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, PSW Real Estate is subject to the jurisdiction of the TCEQ pursuant TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., PSW Real Estate failed to obtain approval of a Water Pollution Abatement Plan (“WPAP”) prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed that significant soil disturbing activity had occurred on the Site and all of the existing impervious cover including two houses and driveways had been demolished and cleared, totaling approximately 0.56 acres 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 PSW Real Estate 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, PSW Real Estate failed to file a timely answer 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 PSW Real Estate 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 PSW Real Estate 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 five thousand dollars (\$5,000.00) 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. PSW Real Estate is assessed an administrative penalty in the amount of five thousand dollars (\$5,000.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and PSW Real Estate'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: PSW Real Estate, L.L.C.; Docket No. 2008-1884-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. The provisions of this Order shall apply to and be binding upon PSW Real Estate. PSW Real Estate is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
4. If PSW Real Estate 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, PSW Real Estate's failure to comply is not a violation of this Order. PSW Real Estate shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. PSW Real Estate shall notify the Executive

Director within seven days after PSW Real Estate 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 PSW Real Estate shall be made in writing to the Executive Director. Extensions are not effective until PSW Real Estate 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 PSW Real Estate if the Executive Director determines that PSW Real Estate 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.

PSW Real Estate, L.L.C.  
Docket No. 2008-1884-EAQ-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF BARHAM A. RICHARD**

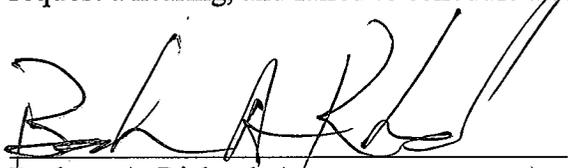
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Barham A. Richard. 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 PSW Real Estate, L.L.C.” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 26, 2009.

The EDPRP was mailed to PSW Real Estate at its last known address on March 26, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” PSW Real Estate received notice of the EDPRP on April 1, 2009, as evidenced by the signature on the card.

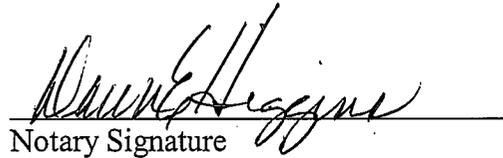
More than 20 days have elapsed since PSW Real Estate received notice of the EDPRP. PSW Real Estate failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Barham A. Richard, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, 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 5<sup>TH</sup> day of May, A.D., 2009.



Notary Signature

