

Executive Summary – Enforcement Matter – Case No. 37063  
DIAMOND T RANCH DEVELOPMENT, INC.  
RN105371462  
Docket No. 2009-0105-EAQ-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
EAQ

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
Stone Oak Parkway adjacent to and east of Stone Oak Park in San Antonio, Bexar County

**Type of Operation:**  
commercial construction site

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** August 19, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$2,600

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$2,600

**Compliance History Classifications:**  
Person/CN – Average  
Site/RN – Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

DIAMOND T RANCH DEVELOPMENT, INC.

RN105371462

Docket No. 2009-0105-EAQ-E

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** October 28, 2008  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** January 7, 2009

***Violation Information***

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)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent submitted the WPAP on August 8, 2008, which was approved on October 28, 2008.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** May 15, 2009 (EDPRP); September 29, 2009 (EDFARP)  
**Date(s) Green Card(s) Signed:** N/A  
**Date(s) Answer(s) Filed:** October 20, 2009  
**SOAH Referral Date:** May 17, 2011  
**Hearing Date(s):**  
Preliminary hearing: June 30, 2011 (defaulted)  
Evidentiary hearing: N/A

***Contact Information***

**TCEQ Attorneys:** Jennifer Cook, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ Enforcement Coordinator:** Samuel Short, Water Enforcement Section, (512) 239-5363

**TCEQ Regional Contact:** Lynn Bumguardner, San Antonio Regional Office, (210) 403-4050

**Respondent:** Dode G. Harvey, President, Diamond T Ranch Development, Inc., 18866 Stone Oak Parkway, Suite 103-33, San Antonio, Texas 78258; and 250 Gazelle Leap, San Antonio, Texas 78258

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	12-Jan-2009			
	<b>PCW</b>	22-Apr-2009	<b>Screening</b>	22-Jan-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	DIAMOND T RANCH DEVELOPMENT, INC.				
<b>Reg. Ent. Ref. No.</b>	RN105371462				
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Major		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	37063	<b>No. of Violations</b>	1		
<b>Docket No.</b>	2009-0105-EAQ-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Samuel Short		
		<b>EC's Team</b>	Enforcement Team 3		
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
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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>	4.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$100
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Notes: Enhancement recommended for having two NOV's for non-similar violations within the last five years.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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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>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$0  
 Approx. Cost of Compliance: \$5,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,600
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$2,600
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,600
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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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>	\$2,600
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Screening Date 22-Jan-2009

Docket No. 2009-0105-EAQ-E

PCW

Respondent DIAMOND T RANCH DEVELOPMENT, INC.

Policy Revision 2 (September 2002)

Case ID No. 37063

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105371462

Media [Statute] Edwards Aquifer

Enf. Coordinator Samuel Short

### 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 ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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) 4%

#### >> 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

Enhancement recommended for having two NOVs for non-similar violations within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

**Screening Date** 22-Jan-2009 **Docket No.** 2009-0105-EAQ-E **PCW**  
**Respondent** DIAMOND T RANCH DEVELOPMENT, INC. *Policy Revision 2 (September 2002)*  
**Case ID No.** 37063 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105371462  
**Media [Statute]** Edwards Aquifer  
**Enf. Coordinator** Samuel Short

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input checked="" type="text" value="x"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

**Notes**

**Violation Subtotal**

**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** DIAMOND T RANCH DEVELOPMENT, INC.  
**Case ID No.** 37063  
**Reg. Ent. Reference No.** RN105371462  
**Media** Edwards Aquifer  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$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	\$5,000	28-Oct-2008	28-Oct-2008	0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare, submit the application, and obtain approval of an Edwards Aquifer WPAP. Date required is the date the violation was first documented. Final date is the date the WPAP was approved.

### 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

\$5,000

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603257940 DIAMOND T RANCH DEVELOPMENT Classification: AVERAGE Rating: 2.75  
Regulated Entity: RN105371462 DIAMOND T RANCH UNIT 2 Classification: AVERAGE Site Rating: 2.50  
ID Number(s):  
STORMWATER PERMIT TXR15MJ13  
EDWARDS AQUIFER REGISTRATION 13-07101301  
Location: LOCATED ON STONE OAK PKWY ADJACENT TO AND E OF  
STONE OAK PARK  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: January 29, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 29, 2004 to January 29, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Samuel Short Phone: (512) 239-5363

## 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? 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 judgments, 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 | 08/28/2008 | (684230) |
| 2 | 01/07/2009 | (699633) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 08/05/2008 (684230)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Description: Failure to obtain storm water permit coverage for storm water discharges associated with a construction activity.
- Date: 08/11/2008 (684230)  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(g)(1)(A)  
Description: Failure to comply with Standard Condition #2 of the December 4, 2007 WPAP Approval Letter by failing to submit proof of recordation of notice in the county deed records.
- Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 213, SubChapter A 213.5(f)(1)(A)(i)  
Description: Failure to comply with Standard Condition #5 of the December 4, 2007 WPAP Approval Letter by failing to provide written notification of intent to commence construction, replacement, or rehabilitation of the approved project.
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMS).  
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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING DIAMOND T  
RANCH DEVELOPMENT, INC.;  
RN105371462**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

### **DOCKET NO. 2009-0105-EAQ-E**

At its \_\_\_\_\_ agenda meeting, 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 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Diamond T Ranch Development, Inc. ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a 5.08 acre commercial construction site located on Stone Oak Parkway adjacent to and east of Stone Oak Park in San Antonio, Bexar County, Texas (the "Site"). Respondent has discharged waste from the Site into or adjacent to water in the state or committed another act that has caused or will cause pollution of water in the state under the Texas Water Code.
2. During an investigation conducted on October 28, 2008, a TCEQ San Antonio Regional Office investigator documented that Respondent failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, prior to receiving approval of the WPAP, there was ongoing construction at the Site, which included areas that were cleared, a realigned road, large spoil piles, apparent staging areas, and heavy machinery on the Site.
3. Respondent received notice of the violation on or about January 12, 2009.
4. The Executive Director recognizes that Respondent submitted the WPAP on August 8, 2008, and the WPAP was approved on October 28, 2008.
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 Diamond T Ranch Development, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on May 15, 2009.

6. 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 Diamond T Ranch Development, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on September 29, 2009.
7. Respondent filed an answer requesting a hearing on October 20, 2009, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 17, 2011.
8. On June 1, 2011, the TCEQ Chief Clerk mailed notice of the June 30, 2011, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent at its last known address.
9. On June 30, 2011, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
10. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1 Dismissing and Remanding, issued on June 30, 2011, so that TCEQ may dispose of this case on a default basis.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1).
3. As evidenced by Finding of Fact No. 7, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(a)(3) and 30 TEX. ADMIN. CODE § 70.109.
4. As evidenced by Finding of Fact No. 8, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
5. As evidenced by Findings of Fact Nos. 9 and 10, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of two thousand six hundred dollars (\$2,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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. Respondent is assessed an administrative penalty in the amount of two thousand six hundred dollars (\$2,600.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Diamond T Ranch Development, Inc.; Docket No. 2009-0105-EAQ-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent. Respondent 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 Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the

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

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF JENNIFER COOK**

**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

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"My name is Jennifer Cook. 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.

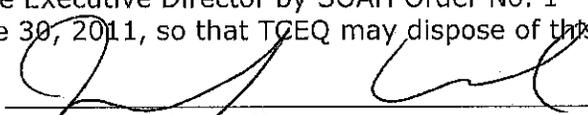
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Diamond T Ranch Development, Inc." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on May 15, 2009.

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 Diamond T Ranch Development, Inc." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 29, 2009.

Respondent filed an answer requesting a hearing on October 20, 2009, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 17, 2011. On June 1, 2011, the TCEQ Chief Clerk mailed notice of the June 30, 2011, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent's last known address.

Respondent failed to appear at the hearing on June 30, 2011. At that hearing, I requested and received a finding that Respondent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056(4) and the referring agency's rules."

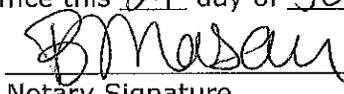
The ALJ remanded the matter to the Executive Director by SOAH Order No. 1 Dismissing and Remanding, issued on June 30, 2011, so that TCEQ may dispose of this case on a default basis."



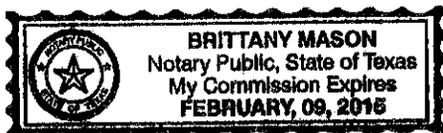
Jennifer Cook, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 21<sup>st</sup> day of JULY, A.D. 2011.



Notary Signature



Notary without Bond