

**RESPONDENT NAME: RAYMOND PEREZ
DOCKET NO. 2010-0524-MSW-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint: N/A</p> <p>Date of Investigation: January 19, 2010</p> <p>Date of NOE: March 16, 2010</p> <p>Background Facts: The EDPRP was filed on June 28, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. According to the return receipt "green card," Respondent received the EDPRP on July 13, 2010. The EDFARP was filed on August 24, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. According to the return receipt "green card," Respondent received the EDFARP on September 16, 2010. Respondent failed to file an answer and failed to request a hearing.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p>MSW: Failed to prevent the unauthorized disposal of municipal solid waste (approx. 1,111 cu/yds of used clothing) [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$9,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$9,000</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Average</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>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease disposing any additional MSW at the Site. 2. Within 30 days, remove all MSW from the Site and dispose of it at an authorized facility. 3. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Mar-2010	Screening	30-Mar-2010	EPA Due	
	PCW	1-Apr-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Raymond Perez
Reg. Ent. Ref. No.	RN105237036
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	39442	No. of Violations	1	
Docket No.	2010-0524-MSW-E	Order Type	1660	
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	John Shelton	
		EC's Team	Enforcement Team 6	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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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.

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$1,500
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Notes	Enhancement for one 1660 order containing a denial of liability.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$527	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$11,086	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$9,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,000
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DEFERRAL	0.0%	Reduction	Adjustment	\$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.
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PAYABLE PENALTY	\$9,000
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Screening Date 30-Mar-2010

Docket No. 2010-0524-MSW-E

PCW

Respondent Raymond Perez

Policy Revision 2 (September 2002)

Case ID No. 39442

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105237036

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	1	20%
	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) 20%

>> 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 for one 1660 order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date	30-Mar-2010	Docket No.	2010-0524-MSW-E	PCW
Respondent	Raymond Perez	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	39442	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN105237036			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	John Shelton			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)			
Violation Description	Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 1,111 cubic yards of used clothing were disposed of at the Site.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual		x	
	Potential			
				Percent 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Human health or the environment have been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.				
					Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events	3	Number of violation days	70	
<i>mark only one with an x</i>	daily			Violation Base Penalty \$7,500
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
<div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> Three monthly events are recommended from the January 19, 2010 investigation date to the March 30, 2010 screening date. </div>				

Good Faith Efforts to Comply 0.0% Reduction \$0

		Before NOV	NOV to EDPRP/Settlement
Extraordinary			
Ordinary			
N/A	x		(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal \$7,500			

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount	\$527	Violation Final Penalty Total	\$9,000
		This violation Final Assessed Penalty (adjusted for limits)	\$9,000

Economic Benefit Worksheet

Respondent Raymond Perez
Case ID No. 39442
Reg. Ent. Reference No. RN105237036
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				0.00	\$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	\$11,086	19-Jan-2010	1-Jan-2011	0.95	\$527	n/a	\$527
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of approximately 1,111 cubic yards of MSW at an authorized facility. The 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				0.00	\$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

\$11,086

TOTAL

\$527

Compliance History Report

Customer/Respondent/Owner-Operator: CN603197963 PEREZ, RAYMOND Classification: AVERAGE Rating: 45.00

Regulated Entity: RN105237036 TEXAN GARDENS UNAUTHORIZED DISPOSAL SITE Classification: AVERAGE Site Rating: 45.00

ID Number(s): MUNICIPAL SOLID WASTE NON ID NUMBER 455150163

Location: Texan Gardens Subdivision, Lot No. 12, Block No. 21, On Iowa Rd approx. 1.8 miles north of the intersection of Iowa Rd and 7 Mile Line Rd, near La Joya, Hidalgo County, Texas

TCEQ Region: REGION 15 - HARLINGEN

Date Compliance History Prepared: March 30, 2010

Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 30, 2005 to March 30, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: John Shelton Phone: (512) 239-2563

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 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.
Effective Date: 07/09/2009 ADMINORDER 2007-1276-MSW-E
Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
Description: Failure to prevent the disposal of waste at an unauthorized disposal site.
- 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 03/17/2010 (791222)
- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
RAYMOND PEREZ;
RN105237036**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0524-MSW-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 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 Raymond Perez ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns 4.98 acres of Lot No. 12, Block No. 21, Texan Gardens Subdivision, located approximately 1.8 miles north of the intersection of Iowa Road and 7 Mile Line Road, near the city of La Joya in Hidalgo County, Texas (the "Site"). The Site involves the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on January 19, 2010, a TCEQ Harlingen Regional investigator documented that Respondent failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 1,111 cubic yards of used clothing were disposed of at the Site.
3. Respondent received notice of the violation on or about March 21, 2010.
4. 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 Raymond Perez," (the "EDPRP") in the TCEQ Chief Clerk's office on June 28, 2010.
5. By letter dated June 28, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on July 13, 2010, as evidenced by the signature on the card.

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 and Requiring Certain Actions of Raymond Perez," (the "EDFARP") in the TCEQ Chief Clerk's office on August 24, 2010.
7. By letter dated August 24, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the return receipt "green card," Respondent received notice of the EDFARP on September 16, 2010, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Findings of Fact Nos. 4 through 7, the Executive Director timely served Respondent with proper notice of the EDPRP and the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Respondent 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 Respondent 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 Respondent 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 nine thousand dollars (\$9,000.00) 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. Respondent is assessed an administrative penalty in the amount of nine thousand dollars (\$9,000.00) 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: Raymond Perez; Docket No. 2010-0524-MSW-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. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall cease disposing any additional municipal solid waste at the Site;
 - b. Within 30 days after the effective date of this Order, Respondent shall remove all municipal solid waste from the Site and dispose of it at an authorized facility; and
 - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Mr. Jaime A. Garza, Waste Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Ave.
Harlingen, Texas 78550-5247

4. All relief not expressly granted in this Order is denied.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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

For the Commission

AFFIDAVIT OF SHARESASA Y. ALEXANDER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Sharesa Y. Alexander. 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 and Requiring Certain Actions of Raymond Perez” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 28, 2010.

The EDPRP was mailed to Respondent at his last known address on June 28, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Respondent received notice of the EDPRP on July 13, 2010, as evidenced by the signature on the card.

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 and Requiring Certain Actions of Raymond Perez” (the “EDFARP”) was filed with the Office of the Chief Clerk on August 24, 2010.

The EDFARP was mailed to Respondent at his last known address on August 24, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Respondent received notice of the EDFARP on September 16, 2010, as evidenced by the signature on the card.

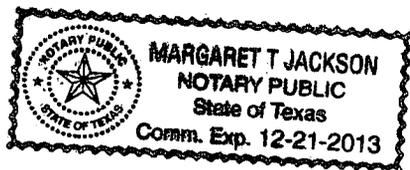
More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Sharesa Y. Alexander, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Sharesa Y. Alexander, 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 13th day of October, A.D., 2010.



Margaret Jackson
Notary Signature