EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2009-1115-WQ-E RN105333728 CASE NO. 37967

RESPONDENT NAME: EPOWER INVESTMENTS, LLC

ORDER TYPE:		
___ AGREED ORDER	___ FINDINGS AGREED ORDER	_X_ 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	___ OCCUPATIONAL CERTIFICATION
_X_ WATER QUALITY	___ SEWAGE SLUDGE	___ UNDERGROUND INJECTION CONTROL
___ MUNICIPAL SOLID WASTE	___ RADIOACTIVE WASTE	___ DRY CLEANER REGISTRATION

SITE WHERE VIOLATION OCCURRED: 5500 Brewster Street, San Antonio, Bexar County

TYPE OF OPERATION: electronic scrap recycling facility

SMALL BUSINESS: _X_ Yes ___ No ___ N/A

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that electronics were being improperly disposed of at the site. There is no record of additional pending enforcement action regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired February 21, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Peipey Tang, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Steve Villatoro, Water Enforcement Section, MC 169, (512) 239-4930

TCEQ Regional Contact: Mr. Todd Jones, San Antonio Regional Office, MC R-13, (210) 403-4025

Respondent: Mr. Marvin Thomas, Director, epower Investments LLC, 2641 Ashley Oak Dr., Schertz, Texas 78154

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: _X_ Complaint ___ Routine ___ Enforcement Follow-up _X_ Records Review **Date of Complaint:** July 3, 2008 **Dates of Investigation:** July 8 and 22, 2008 (complaint investigation) June 2, 2009 (follow-up/records review) **Date of NOE:** June 11, 2009 **Background Facts:** The EDPRP was filed on November 10, 2009. Respondent filed an answer and the case was referred to SOAH. An EDFARP was filed on October 29, 2010. On November 9, 2010, the ALJ convened the evidentiary hearing, but Respondent failed to appear. 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. **Current Compliance Status:** Respondent has not yet submitted documentation demonstrating compliance with the technical requirements. **WQ:** Failed to obtain authorization to discharge storm water associated with electronic scrap recycling activities [TEX. WATER CODE § 26.121, 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c)].	**Total Assessed:** $1,100 **Total Deferred:** $0 ___ Expedited Order ___ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Due to General Revenue:** $1,100 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. **Compliance History Classifications:** *Person/CN* – Average *Site/RN* – Average **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** Respondent shall undertake the following technical requirements: 1. Within 30 days, develop and implement a storm water pollution prevention plan and submit a Notice of Intent letter to obtain authorization to discharge storm water from the Facility; and 2. 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	15-Jun-2009				
PCW	9-Jul-2009	Screening	26-Jun-2009	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	epower Investments, LLC		
Reg. Ent. Ref. No.	RN105333728		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	37967	No. of Violations	1
Docket No.	2009-1115-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steve Villatoro
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$1,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **10.0%** Enhancement *Subtotals 2, 3, & 7* **$100**

Notes: An enhancement is recommended due to two NOVs with same or similar violations.

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 $233
Approx. Cost of Compliance $2,000
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$1,100**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$1,100**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$1,100**

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 **$1,100**

Screening Date	26-Jun-2009	**Docket No.**	2009-1115-WQ-E	**PCW**
Respondent	epower Investments, LLC			*Policy Revision 2 (September 2002)*
Case ID No.	37967			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105333728			
Media [Statute]	Water Quality			
Enf. Coordinator	Steve Villatoro			

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*)	2	10%
	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) 10%

>> 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

An enhancement is recommended due to two NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date	26-Jun-2009	**Docket No.** 2009-1115-WQ-E	**PCW**
Respondent	epower Investments, LLC		*Policy Revision 2 (September 2002)*
Case ID No.	37967		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105333728		
Media [Statute]	Water Quality		
Enf. Coordinator	Steve Villatoro		

Violation Number 1

Rule Cite(s) Texas Water Code § 26.121, 30 Tex. Admin. Code § 281.25(a)(4), and 40 Code of Federal Regulations § 122.26(c)

Violation Description Failed to obtain authorization to discharge storm water associated with electronic scrap recycling activities, as documented during a record review conducted on June 2, 2009. Specifically, the Respondent has not yet submitted a Notice of Intent to obtain authorization under a Texas Pollutant Discharge Elimination System Multi-Sector General Permit.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 24 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One monthly event is recommended from the date of record review (06/02/2009) to the screening date (06/26/2009).

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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $233

Statutory Limit Test

Violation Final Penalty Total $1,100

This violation Final Assessed Penalty (adjusted for limits) $1,100

Economic Benefit Worksheet

Respondent epower Investments, LLC
Case ID No. 37967
Reg. Ent. Reference No. RN105333728
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$2,000	1-Nov-2007	28-Feb-2010	2.33	$233	n/a	$233
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated costs to develop and implement a storm water pollution prevention plan and submit a Notice of Intent. Date Required is the date the violation was initially documented and Final Date is the date of expected 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 $2,000

TOTAL $233

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603405721	epower Investments, LLC	Classification: Average	Rating: 1.00
Regulated Entity:	RN105333728	TECHNOLOGY RECYCLING	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):				
Location:	5500 Brewster Street, San Antonio, Bexar County, Texas, 78233			
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	July 30, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 24, 2004 to July 24, 2009			

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

Name: Steve Villatoro Phone: 512-239-4930

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: 9/1/2008 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	11/01/2007	(597132)
2	07/02/2008	(619131)
3	10/30/2008	(705902)
4	06/12/2009	(747904)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/01/2007 (597132)

Self Report? NO Classification: Minor

Description: Failure to obtain permit coverage to discharge storm water associated with your industrial activity (Scrap Recycling - SIC 5093). The respondent failed to answer Notices of Violation dated November 1, 2007 and October 30, 2008. Reasonable efforts have been made to contact the respondent for compliance progress/information.

Date: 10/30/2008 (705902)

Self Report? NO Classification: Minor

Description: Failure to obtain permit coverage to discharge storm water associated with your industrial activity (Scrap Recycling - SIC 5093). The respondent failed to answer Notices of Violation dated November 1, 2007 and October 30, 2008. Reasonable efforts have been made to contact the respondent for compliance progress/information.

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 EPOWER INVESTMENTS, LLC; RN105333728	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2009-1115-WQ-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 and corrective action of the respondent. The respondent made the subject of this Order is epower Investments, LLC ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates an electronic scrap recycling facility located at 5500 Brewster Street in San Antonio, Bexar County, Texas (the "Facility"). Respondent has discharged waste from the Facility into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.

2. During a record review conducted on June 2, 2009, a TCEQ San Antonio Regional Office investigator documented that Respondent failed to obtain authorization to discharge storm water associated with electronic scrap recycling activities. Specifically, Respondent did not submit a Notice of Intent to obtain authorization under a Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP").

3. Respondent received notice of the violation on or about June 16, 2009.

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 epower Investments, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on November 10, 2009. 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 epower Investments, LLC" (the "EDFARP") in the TCEQ Chief Clerk's office on October 29, 2010.

5. Respondent filed an answer requesting a hearing on February 16, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on April 9, 2010.

6. On May 20, 2010, the preliminary hearing was held and the Administrative Law Judge ("ALJ") issued Order No. 1, which set the evidentiary hearing for October 12, 2010. The SOAH docket clerk mailed a copy of Order No. 1 to Respondent at its last known address via first class mail, postage pre-paid.

7. On October 5, 2010, the ALJ issued Order No. 3, Granting Agreed Continuance and Rescheduled Hearing, which re-set the evidentiary hearing for November 9, 2010. The SOAH docket clerk mailed a copy of Order No. 3 to Respondent at its last known address via first class mail, postage pre-paid.

8. On November 9, 2010, the ALJ convened the evidentiary hearing, but Respondent failed to appear. 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.

9. The ALJ remanded the matter to the Executive Director by SOAH Order No. 4, Granting Motion to Dismiss and Remand, issued on November 9, 2010, 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 authorization to discharge storm water associated with electronic scrap recycling activities, in violation of TEX. WATER CODE § 26.121, 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c).

3. As evidenced by Finding of Fact No. 5, 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, 155.101(a)(3), and 30 TEX. ADMIN. CODE § 70.109.

4. As evidenced by Finding of Fact No. 7, Respondent was provided proper notice of the evidentiary 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), 155.401(a), and 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).

5. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to appear for the evidentiary hearing, and pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), and 30 TEX. ADMIN. CODE § 70.106(b), 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.

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 one thousand one hundred dollars ($1,100.00) 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 one thousand one hundred dollars ($1,100.00) 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: epower Investments, LLC; Docket No. 2009-1115-WQ-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. Within 30 days after the effective date of this Order, Respondent shall develop and implement a storm water pollution prevention plan and submit a Notice of Intent letter to obtain authorization to discharge storm water from the Facility, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4), and TPDES MSGP No. TXR050000 to:

      Texas Commission on Environmental Quality
      Storm Water Processing Center, MC 228
      P.O. Box 13087
      Austin, Texas 78711-3087

b. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. 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."

The certification shall be submitted to:

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

with a copy to:

Lynn Bumguardner, Water Section, Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

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 Facility 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 PEIPEY TANG

STATE OF TEXAS §
§
COUNTY OF Travis §

"My name is Peipey Tang. 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 epower Investments, LLC," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 10, 2009.

The EDPRP was mailed to Respondent's last known address on November 10, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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 epower Investments, LLC," (the "EDFARP") was filed in the TCEQ Chief Clerk's office on October 29, 2010.

The EDFARP was mailed to Respondent's last known address on October 29, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

Respondent filed an answer requesting a hearing on February 16, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on April 9, 2010. On May 20, 2010, the Administrative Law Judge ("ALJ") issued Order No. 1, which set the evidentiary hearing for October 12, 2010. The SOAH docket clerk mailed a copy of Order No. 1 to Respondent at its last known address via first class mail, postage pre-paid.

On October 5, 2010, the ALJ issued Order No. 3, Granting Agreed Continuance and Rescheduled Hearing, which set the evidentiary hearing for

November 9, 2010. The SOAH docket clerk mailed a copy of Order No. 3 to Respondent at its last known address via first class mail, postage pre-paid.

Respondent failed to appear at the hearing on November 9, 2010. At that hearing, I requested that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), 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 and the referring agency's rules."

The ALJ remanded the matter to the Executive Director by SOAH Order No. 4, Granting Motion to Dismiss and Remand, issued on November 9, 2010, so that TCEQ may dispose of this case on a default basis."

Peipey Tang

Peipey Tang, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Peipey Tang, 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 30th day of December, A.D. 2010.

Margaret Jackson

Notary Signature

MARGARET T JACKSON
NOTARY PUBLIC
State of Texas
Comm. Exp. 12-21-2013