

TERRY F. LEE

RN106078256

Docket No. 2011-0533-MSW-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

838 State Highway 72 West, Yorktown, Dewitt County

Type of Operation:

unauthorized waste disposal site

Other Significant Matters:

Additional Pending Enforcement Actions:	2011-0534-MSW-E; same RN, Respondent is operator
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: November 18, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$3,866

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: \$3,866

Compliance History Classifications:

Person/CN – Not yet rated

Site/RN – Not yet rated

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

TERRY F. LEE

RN106078256

Docket No. 2011-0533-MSW-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: January 24, 2011
Date(s) of NOV(s): N/A
Date(s) of NOE(s): March 29, 2011

Violation Information

Failed to prevent the unauthorized disposal of MSW (approx. 513 cubic yards of tires, PVC pipes, roofing shingles, wooden pallets, cement sacks, oily rags and gloves, cardboard cement forms, metal drums, scrap metal, carboys, cardboard drum, plastic drum, washing machine and washing machine drum, metal equipment, plywood, buckets, plastic hoses, various types of cardboard boxes, plastic, rubber, household furniture, and trash) [30 TEX. ADMIN. CODE § 330.15(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

All MSW was removed from the Site and disposed of at an authorized facility on March 14, 2011.

Technical Requirements:

1. Immediately, cease disposing of any additional MSW at the Site.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: September 6, 2011
Date(s) Green Card(s) Signed: September 16, 2011
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Xavier Guerra, Litigation Division, (210) 403-4016
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Mike Pace, Waste Enforcement Section, (817) 588-5933

TCEQ Regional Contact: Brad Genzer, Corpus Christi Regional Office, (361) 825-3106

Respondent: Terry F. Lee, 838 State Highway 72 West, Yorktown, Texas 78249

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	4-Apr-2011	Screening	5-May-2011	EPA Due	
	PCW	20-Jul-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	Terry F. Lee		
Reg. Ent. Ref. No.	RN106078256		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41435	No. of Violations	1
Docket No.	2011-0533-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		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	\$1,000
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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

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: \$2,866
 Approx. Cost of Compliance: \$2,723
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	286.6%	Adjustment	\$2,866
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with the violation.

Final Penalty Amount	\$3,866
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,866
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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	\$3,866
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Screening Date 5-May-2011

Docket No. 2011-0533-MSW-E

PCW

Respondent Terry F. Lee

Case ID No. 41435

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106078256

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("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>)	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) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

Screening Date 5-May-2011

Docket No. 2011-0533-MSW-E

PCW

Respondent Terry F. Lee

Policy Revision 2 (September 2002)

Case ID No. 41435

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106078256

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

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, the Respondent allowed disposal of approximately 513 cubic yards of MSW at the Site, including but not limited to tires, PVC pipes, roofing shingles, wooden pallets, cement sacks, oily rags and gloves, cardboard cement forms, metal drums, scrap metal, carboys, cardboard drum, plastic drum, washing machine and washing machine drum, metal equipment, plywood, buckets, plastic hoses, various types of cardboard boxes, plastic, rubber, and household furniture and trash.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (10%). Includes an 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Human health and the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 49

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event. Includes a note: 'mark only one with an x'.

Violation Base Penalty \$1,000

One quarterly event is recommended from the January 24, 2011 investigation date to the March 14, 2011 waste removal date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts with columns: Extraordinary, Ordinary, N/A, and sub-columns: Before NOV, NOV to EDPRP/Settlement Offer.

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,866

Violation Final Penalty Total \$3,866

This violation Final Assessed Penalty (adjusted for limits) \$3,866

Economic Benefit Worksheet

Respondent Terry F. Lee
Case ID No. 41435
Req. Ent. Reference No. RN106078256
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$2,723	24-Jan-2011	14-Mar-2011	1.05	\$143	\$2,723	\$2,866
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost to dispose of approximately 513 cubic yards of waste at an authorized facility per receipts submitted. The Date Required is the investigation date and the Final Date is the waste removal date.

Approx. Cost of Compliance

\$2,723

TOTAL

\$2,866

Compliance History

Customer/Respondent/Owner-Operator: CN603805557 Lee, Terry F. Classification: Rating:
Regulated Entity: RN106078256 Terry Lee Property Classification: Site Rating:
ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER UNA455140084
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R106078256
Location: 838 STATE HWY 72 WEST, YORKTOWN, DEWITT COUNTY, TX
TCEQ Region: REGION 14 - CORPUS CHRISTI
Date Compliance History Prepared: April 07, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 07, 2006 to April 07, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Mike Pace Phone: (817) 588-2933

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/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: N/A Repeat Violator: N/A

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. 03/29/2011 (900264)
 - 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
TERRY F. LEE;
RN106078256**

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§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-0533-MSW-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary 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 Terry F. Lee ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns an unauthorized waste disposal site located at 838 State Highway 72 West in Yorktown, Dewitt County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on January 24, 2011, a TCEQ Corpus Christi Regional Office investigator documented that Respondent failed to prevent the unauthorized disposal of MSW. Specifically, Respondent allowed disposal of approximately 513 cubic yards of MSW at the Site, including but not limited to tires, PVC pipes, roofing shingles, wooden pallets, cement sacks, oily rags and gloves, cardboard cement forms, metal drums, scrap metal, carboys, cardboard drum, plastic drum, washing machine and washing machine drum, metal equipment, plywood, buckets, plastic hoses, various types of cardboard boxes, plastic, rubber, household furniture, and trash.
3. Respondent received notice of the violation on or about April 3, 2011.
4. The Executive Director recognizes that all MSW was removed from the Site and disposed of at an authorized facility on March 14, 2011.
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 and Requiring Certain Actions of Terry F. Lee" (the "EDPRP") in the TCEQ Chief Clerk's office on September 6, 2011.

6. By letter dated September 6, 2011, 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 September 16, 2011, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding 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 MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent 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, 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 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.
6. An administrative penalty in the amount of three thousand eight hundred sixty-six dollars (\$3,866.00) 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 three thousand eight hundred sixty-six dollars (\$3,866.00) 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: Terry F. Lee; Docket No. 2011-0533-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 of any additional MSW at the Site.
 - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.c., below, to demonstrate compliance with Ordering Provision No. 3.a.
 - c. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 supporting 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:

Brad Genzer, Waste Section Manager
Texas Commission on Environmental Quality
Corpus Christi Regional Office
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-55003

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 XAVIER GUERRA

STATE OF TEXAS

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COUNTY OF BEXAR

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"My name is Xavier Guerra. 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 Terry F. Lee" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 6, 2011.

The EDPRP was mailed to Respondent's last known address on September 6, 2011, 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 September 16, 2011, as evidenced by the signature on the card.

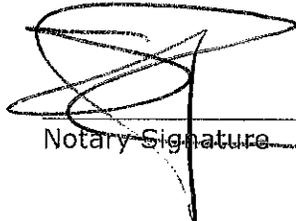
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Xavier Guerra, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Xavier Guerra, 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 20 day of October, A.D. 2011.



Notary Signature

