

Executive Summary – Enforcement Matter – Case No. 40915
John Duncan d/b/a A Plus Construction and Lawn
RN105937064
Docket No. 2011-0021-AIR-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
AIR

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
4713 Massey Ranch Road, Manvel, Brazoria County

Type of Operation:
tree cutting service

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: December 30, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$6,147

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$6,147

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

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 40915
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RN105937064
Docket No. 2011-0021-AIR-E

Investigation Information

Complaint Date(s): April 13, 2010
Complaint Information: Complaint alleged that Respondent was burning tree debris and that Respondent's property contained large piles of tree stumps and debris.
Date(s) of Investigation: April 20, 2010, and December 8, 2010
Date(s) of NOV(s): June 18, 2010
Date(s) of NOE(s): December 17, 2010

Violation Information

Failed to comply with the general prohibition requirements for outdoor burning [TEX. HEALTH & SAFETY CODE 382.085(b) and 30 TEX. ADMIN. CODE § 111.201].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Immediately cease unauthorized outdoor burning activities; and
2. Within 15 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: April 14, 2011
Date(s) Green Card(s) Signed: Unclaimed
Date(s) Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Anna M. Treadwell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
TCEQ Enforcement Coordinator: John Muennink, Air Enforcement Section, (713) 422-7089
TCEQ Regional Contact: Jason Harris, Houston Regional Office, (713) 767-3609
Respondent: John Duncan, 4713 Massey Ranch Road, Manvel, Texas 77578
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	20-Dec-2010	Screening	29-Dec-2010	EPA Due	
	PCW	3-Jan-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	John Duncan dba A Plus Construction and Lawn
Reg. Ent. Ref. No.	RN105937064
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40915	No. of Violations	1
Docket No.	2011-0021-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	John Muennink
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$100
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Notes	Enhancement for one NOV with same/similar violations.
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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	\$4,062	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,995	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE	192.7%	Adjustment	\$4,047
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Other factors adjustment for the recovery of the avoided costs associated with Violation No. 1.
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Final Penalty Amount	\$6,147
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,147
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DEFERRAL		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	No deferral because this is not an expedited settlement.
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PAYABLE PENALTY	\$6,147
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Screening Date 29-Dec-2010

Docket No. 2011-0021-AIR-E

PCW

Respondent John Duncan dba A Plus Construction and Lawn

Policy Revision 2 (September 2002)

Case ID No. 40915

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105937064

Media [Statute] Air

Enf. Coordinator John Muennink

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>)	1	5%
	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) 5%

>> 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 NOV with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 29-Dec-2010

Docket No. 2011-0021-AIR-E

PCW

Respondent John Duncan dba A Plus Construction and Lawn

Policy Revision 2 (September 2002)

Case ID No. 40915

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105937064

Media [Statute] Air

Enf. Coordinator John Muennink

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the general prohibition requirements for outdoor burning. Specifically, TCEQ investigators observed the charred remains of various materials in burn ditches at separate locations on the Site during investigations conducted on April 20, 2010 and on December 8, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to an insignificant amount of pollutants that do not exceed levels protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 254 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$2,000

Two single events are recommended based on the dates of April 20, 2010 and December 8, 2010, the dates that the violation was documented.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,062

Violation Final Penalty Total \$6,147

This violation Final Assessed Penalty (adjusted for limits) \$6,147

Economic Benefit Worksheet

Respondent John Duncan dba A Plus Construction and Lawn
Case ID No. 40915
Req. Ent. Reference No. RN105937064
Media Air
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	\$250	20-Apr-2010	30-Jun-2011	1.19	\$15	n/a	\$15
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

Estimated expense to implement measures and procedures designed to ensure compliance with requirements for outdoor burning. The Date Required is the date of the first investigation that documented the violation. The Final Date is the date that corrective measures are estimated to be completed.

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)	\$3,745	20-Apr-2010	29-Dec-2010	1.61	\$302	\$3,745	\$4,047

Notes for AVOIDED costs

Estimated avoided cost for not properly disposing of approximately 279 cubic yards of waste material, observed on April 20, 2010 and December 8, 2010, at a disposal fee of \$13.42 per yard. The Date Required is the date of the first investigation that documented the violation. The Final Date is the date that the case was screened.

Approx. Cost of Compliance

\$3,995

TOTAL

\$4,062

Compliance History

Customer/Respondent/Owner-Operator: CN603677832 John Duncan Classification: AVERAGE Rating: 1.00

Regulated Entity: RN105937064 A PLUS CONSTRUCTION AND LAWN Classification: AVERAGE Site Rating: 1.00
ID Number(s):

Location: 4713 MASSEY RANCH RD, MANVEL, TX, 77578

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: December 20, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 20, 2005 to December 20, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: John Muennink Phone: (713) 422-8970

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: 9/1/2010 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 12/17/2010 (883868)

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

Date: 06/18/2010 (800209)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)

Description: Failure to prevent outdoor burning (conducted unauthorized outdoor burning) (CATEGORY B18 violation).

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
JOHN DUNCAN D/B/A
A PLUS CONSTRUCTION AND
LAWN;
RN105937064**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-0021-AIR-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. 382, 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 John Duncan d/b/a A Plus Construction and Lawn ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a tree cutting service located at 4713 Massey Ranch Road, Manvel, Brazoria County, Texas (the "Site"). The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During investigations conducted on April 20, 2010, and December 8, 2010, TCEQ Houston Regional Office investigators documented that Respondent failed to comply with the general prohibition requirements for outdoor burning. Specifically, there were charred remains of various materials in burn ditches at separate locations on the Site on April 20, 2010, and December 8, 2010.
3. Respondent received notice of the violations on or about December 22, 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 John Duncan d/b/a A Plus Construction and Lawn" (the "EDPRP") in the TCEQ Chief Clerk's office on April 14, 2011.
5. By letter dated April 14, 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. 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.

6. 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. 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to comply with the general prohibition requirements for outdoor burning, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 111.201.
3. As evidenced by Findings of Fact Nos. 4 and 5, 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(c)(2).
4. As evidenced by Finding of Fact No. 6, 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 six thousand one hundred forty-seven dollars (\$6,147.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of six thousand one hundred forty-seven dollars (\$6,147.00) 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: John Duncan d/b/a A Plus Construction and Lawn; Docket No. 2011-0021-AIR-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 any unauthorized outdoor burning activities, in accordance with 30 TEX. ADMIN. CODE § 111.201; and
 - b. Within 15 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation to demonstrate compliance with Ordering Provision No. 3.a. 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:

Jason Harris, Air Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

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 ANNA M. TREADWELL

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Anna M. Treadwell. 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 John Duncan d/b/a A Plus Construction and Lawn" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 14, 2011.

The EDPRP was mailed to Respondent's last known address on April 14, 2011, 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).

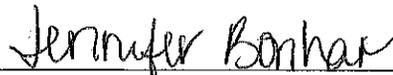
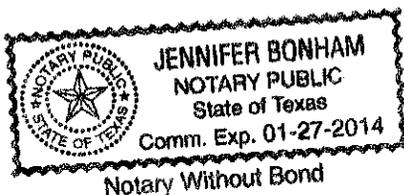
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Anna M. Treadwell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Treadwell, 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 8th day of December, A.D. 2011.



Notary Signature