

Executive Summary – Enforcement Matter – Case No. 42231  
Jason M. Harvey  
RN106160013  
Docket No. 2011-1377-LII-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
LII

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
203 Legends of Hutto Trails, Hutto, Williamson County

**Type of Operation:**  
General construction

**Other Significant Matters:**

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

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** February 17, 2012

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$742.00  
**Total Paid to General Revenue:** \$0  
**Total Due to General Revenue:** \$742.00

**Compliance History Classifications:**

Person/CN – N/A  
Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

Jason M. Harvey

RN106160013

Docket No. 2011-1377-LII-E

***Investigation Information***

**Complaint Date(s):** May 9, 2011  
Complaint Information: Complainant alleged that Respondent contracted to install and commenced installation of an irrigation system without a license and necessary permit.

**Complaint Date(s):** N/A

**Date(s) of Investigation:** May 12, 2011

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** June 24, 2011

***Violation Information***

Failed to obtain a landscape irrigator license prior to selling, designing, providing consultations regarding, installing, altering, repairing, or servicing an irrigation system [TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Immediately, cease selling, designing, providing consultations regarding, installing, altering, repairing, or servicing irrigation systems until properly licensed.
2. Within 15 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** December 6, 2011

**Date(s) Green Card(s) Signed:** December 8, 2011

**Date(s) Answer(s) Filed:** N/A

***Contact Information***

**TCEQ Attorneys:** Elizabeth Lieberknecht, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Eli Martinez, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Miriam Hall, Air Enforcement Section, (512) 239-1044

**TCEQ Regional Contact:** Barry Kalda, Austin Regional Office, (512) 339-2929

**Respondent:** Jason M. Harvey, 509 Gettysburg Loop, Elgin, Texas 78621

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	27-Jun-2011	<b>Screening</b>	4-Aug-2011	<b>EPA Due</b>	
	<b>PCW</b>	27-Oct-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Jason M. Harvey		
<b>Reg. Ent. Ref. No.</b>	RN106160013		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	42231	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-1377-LII-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Irrigators	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Miriam Hall
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$625
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustment for compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$117	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$111	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$625
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	18.7%	<b>Adjustment</b>	\$117
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Other factors adjustment for the recovery of the avoided cost associated with Violation No. 1.
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<b>Final Penalty Amount</b>	\$742
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$742
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$742
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Screening Date 4-Aug-2011

Docket No. 2011-1377-LII-E

PCW

Respondent Jason M. Harvey

Case ID No. 42231

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106160013

Media [Statute] Irrigators

Enf. Coordinator Miriam Hall

### 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 4-Aug-2011

Docket No. 2011-1377-LII-E

PCW

Respondent Jason M. Harvey

Policy Revision 2 (September 2002)

Case ID No. 42231

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106160013

Media [Statute] Irrigators

Enf. Coordinator Miriam Hall

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 30.5(a), Tex. Water Code § 37.003, and Tex. Occupations Code § 1903.251

Violation Description Failed to obtain a landscape irrigator license prior to beginning the installation of an irrigation system at 203 Legends of Hutto Trails, Hutto, Williamson County, Texas during the week of March 7, 2011.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%
Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.					

Adjustment \$1,875

\$625

Violation Events

Number of Violation Events 1 66 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$625

One single event is recommended.

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 \$625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$117

Violation Final Penalty Total \$742

This violation Final Assessed Penalty (adjusted for limits) \$742

## Economic Benefit Worksheet

**Respondent** Jason M. Harvey  
**Case ID No.** 42231  
**Req. Ent. Reference No.** RN106160013  
**Media** Irrigators  
**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]	\$111	7-Mar-2011	12-May-2011	1.10	\$6	\$111	\$117
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for obtaining an irrigator license. The date required is the date that the irrigation system installation commenced. The final date is the date of the investigation.

Approx. Cost of Compliance

\$111

**TOTAL**

\$117

# Compliance History

Customer/Respondent/Owner Operator:	CN603868290	HARVEY, JASON M.	Classification:	Rating:
Regulated Entity:	RN106160013	HARVEY JASON M.	Classification:	Site Rating:
ID Number(s):				
Location:	590 GETTYSBURG LOOP, ELGIN, TX 78621			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	August 09, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 09, 2006 to August 09, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:				
Name:	Miriam Hall	Phone:	(512) 239-1044	

## 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

## 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.)  
N/A
  - 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  
JASON M. HARVEY;  
RN106160013**

**§  
§  
§  
§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-1377-LII-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 chs. 7 and 37, TEX. OCC. CODE ch. 1903, 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 Jason M. Harvey ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a general construction business located at 509 Gettysburg Loop in Elgin, Bastrop County, Texas (the "Business"). Respondent sells, designs, provides consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems and is required to be licensed under 30 TEX. ADMIN. CODE ch. 30. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903.
2. During a record review conducted on May 12, 2011, a TCEQ Central Office investigator documented that Respondent failed to obtain a landscape irrigator license prior to selling, designing, providing consultations regarding, installing, altering, repairing, or servicing an irrigation system. Specifically, Respondent contracted for and commenced installation of a landscape irrigation system at 203 Legends of Hutto Trails in Hutto, Williamson County, Texas during the week of March 7, 2011, without obtaining a landscape irrigator license.
3. Respondent received notice of the violation on or about June 29, 2011.
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 Jason M. Harvey" (the "EDPRP") in the TCEQ Chief Clerk's office on December 6, 2011.
5. By letter dated December 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 or about December 8, 2011. The first class mail has not been returned.

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. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to obtain a landscape irrigator license prior to selling, designing, providing consultations regarding, installing, altering, repairing, or servicing an irrigation system, in violation of TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(a).
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(a).
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 seven hundred forty-two dollars (\$742.00) 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 seven hundred forty-two dollars (\$742.00) 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: Jason M. Harvey; Docket No. 2011-1377-LII-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 selling, designing, providing consultations regarding, installing, altering, repairing, or servicing irrigation systems until properly licensed in accordance with 30 TEX. ADMIN. CODE ch. 30.
  - b. Within 15 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 No. 3.a. The certification 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 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:

FOSD Water Program, Team Leader  
Landscape Irrigation Program, MC 174  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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 Business 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

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For the Commission

**AFFIDAVIT OF ELIZABETH LIEBERKNECHT**

**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

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"My name is Elizabeth Lieberknecht. 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 Jason M. Harvey" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 6, 2011.

The EDPRP was mailed to Respondent's last known address on December 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 or about December 8, 2011. The first class mail has not been returned.

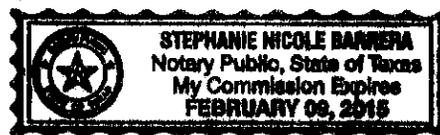
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Elizabeth Lieberknecht, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Elizabeth Lieberknecht, 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 27<sup>th</sup> day of January, A.D. 2012.

  
Notary Signature

Notary without Bond