

Executive Summary – Enforcement Matter – Case No. 38671
CYNTHIA ANN BATISTE
RN105684823
Docket No. 2011-1765-MLM-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

MLM - MSW and WQ

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

6380 Boyt Road, Beaumont, Jefferson County

Type of Operation:

unauthorized municipal solid waste ("MSW") disposal site

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$1,344 (2009-1816-MLM-E)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: February 17, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$10,400

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$10,400

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

CYNTHIA ANN BATISTE

RN105684823

Docket No. 2011-1765-MLM-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: June 6, 2011
Date(s) of NOV(s): March 5, 2009
Date(s) of NOE(s): July 14, 2011

Violation Information

Failed to prevent the unauthorized disposal of new MSW and failed to properly dispose of existing MSW, resulting in an unauthorized discharge into or adjacent to water in the state (approx. 2,800 cu/yd of construction and demolition debris located in and adjacent to a ditch, which during heavy rain events overflows into a drainage canal 20 yards away) [30 TEX. WATER CODE § 26.121(a)(1); 30 TEX. ADMIN CODE § 330.15(c); and TCEQ Default Order Docket No. 2009-1816-MLM-E, Ordering Provision Nos. 2.a. and 2.b.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Immediately cease accepting and disposing of additional MSW at the Facility;
2. Within 30 days, remove the MSW located at the Facility and properly dispose of it at an authorized facility; and
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: October 27, 2011 (EDPRP); December 7, 2011 (EDFARP)
Date(s) Green Card(s) Signed: Refused (EDPRP); Unclaimed (EDFARP)
Date(s) Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Kari L. Gilbreth, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Audra Benoit, Waste Enforcement Section, (409) 899-8799
TCEQ Regional Contact: Derek Eades, Beaumont Regional Office, (409) 898-3838
Respondent: Cynthia Ann Batiste, 6380 Boyt Road, Beaumont, Texas 77713
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	18-Jul-2011	Screening	19-Jul-2011	EPA Due	
	PCW	19-Aug-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	Cynthia Ann Batiste		
Reg. Ent. Ref. No.	RN105684823		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38671	No. of Violations	1
Docket No.	2011-1765-MLM-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Audra Benoit
		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	\$8,000
-------------------------------------------------------------	-------------------	----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	30.0% Enhancement	Subtotals 2, 3, & 7	\$2,400
---------------------------	-------------------	--------------------------------	----------------

Notes	Enhancement for one NOV with same/similar violations and one default order without a denial of liability.
--------------	-----------------------------------------------------------------------------------------------------------

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	\$4,708	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$70,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,400
-----------------------------	-----------------------	-----------------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---------------------------------------------	------	-------------------	------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
--------------	--

Final Penalty Amount	\$10,400
-----------------------------	-----------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,400
-----------------------------------	-------------------------------	-----------------

DEFERRAL		Reduction	Adjustment	\$0
-----------------	--	-----------	-------------------	------------

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral due to direct referral to the Litigation Division.
--------------	----------------------------------------------------------------

PAYABLE PENALTY	\$10,400
------------------------	-----------------

Screening Date 19-Jul-2011

Docket No. 2011-1765-MLM-E

PCW

Respondent Cynthia Ann Batiste

Policy Revision 2 (September 2002)

Case ID No. 38671

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105684823

Media [Statute] Municipal Solid Waste

Enf. Coordinator Audra Benoit

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	1	25%
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) 30%

>> 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 and one default order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 19-Jul-2011

Docket No. 2011-1765-MLM-E

PCW

Respondent Cynthia Ann Batiste

Policy Revision 2 (September 2002)

Case ID No. 38671

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105684823

Media [Statute] Municipal Solid Waste

Enf. Coordinator Audra Benoit

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c), Tex. Water Code § 26.121(a)(1) and TCEQ Default Order Docket No. 2009-1816-MLM-E, Ordering Provision Nos. 2.a. and b.

Violation Description Failed to prevent the unauthorized disposal of new MSW and failed to properly dispose of existing MSW at the Facility, resulting in an unauthorized discharge into or adjacent to water in the state. Specifically, approximately 2,800 cubic yards of debris, consisting primarily of construction and demolition waste generated off-site, was disposed of in an area of the Facility located in and directly adjacent to a ditch, which during heavy rain events overflows into a drainage canal located 20 yards away from the end of the ditch.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	10%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 8 Number of violation days 276

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$8,000

Eight quarterly events are recommended from the effective date of the order, October 16, 2010, to the screening date of July 19, 2011.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDRP/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 \$8,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,708

Violation Final Penalty Total \$10,400

This violation Final Assessed Penalty (adjusted for limits) \$10,400

Economic Benefit Worksheet

Respondent Cynthia Ann Batiste
Case ID No. 38671
Req. Ent. Reference No. RN105684823
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	\$70,000	16-Oct-2010	19-Feb-2012	1.35	\$4,708	n/a	\$4,708
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to properly dispose of municipal solid waste (\$25 per cubic yard x 2,800 cubic yards). The date required is the effective date of the order. The final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$70,000

TOTAL

\$4,708

Compliance History

Customer/Respondent/Owner-Operator: CN603470204 Cynthia Ann Batiste Classification: AVERAGE Rating: 0.75
Regulated Entity: RN105684823 6380 BOYT ROAD Classification: AVERAGE Site Rating: 0.75
ID Number(s):
Location: 6380 BOYT RD, BEAUMONT, TX, 77713
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: August 19, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 19, 2006 to August 19, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Audra Benoit Phone: (409) 899-8799

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.
Effective Date: 10/16/2010 **ADMINORDER 2009-1816-MLM-E**
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 330, SubChapter A 330.15(c)
Description: Failed to prevent the unauthorized disposal of MSW, resulting in an unauthorized into or adjacent to water in the state.
- 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 06/19/2009 (742761)
2 10/23/2009 (775392)
3 02/26/2010 (791828)
4 07/14/2011 (935133)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 03/05/2009 (726029)
Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 330, SubChapter A 330.15(c)
Description: Failed to prevent the unauthorized disposal of MSW, resulting in an unauthorized into or adjacent to water in the state.
- 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

THIS PAGE INTENTIONALLY LEFT BLANK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CYNTHIA ANN BATISTE;
RN105684823**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-1765-MLM-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 26, 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 Cynthia Ann Batiste ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates an unauthorized municipal solid waste ("MSW") disposal site located at 6380 Boyt Road in Beaumont, Jefferson County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. 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 an investigation conducted on June 6, 2011, a TCEQ Beaumont Regional Office investigator documented that Respondent failed to prevent the unauthorized disposal of new MSW and failed to properly dispose of existing MSW at the Facility, resulting in an unauthorized discharge into or adjacent to water in the state. Specifically, approximately 2,800 cubic yards of debris, consisting primarily of construction and demolition waste generated off-site, was disposed of in an area of the Facility located in and directly adjacent to a ditch, which during heavy rain events overflows into a drainage canal located 20 yards away from the end of the ditch.
3. Respondent received notice of the violation on or about July 19, 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 Cynthia Ann Batiste" (the "EDPRP") in the TCEQ Chief Clerk's office on October 27, 2011.

5. By letter dated October 27, 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 "refused." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
6. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cynthia Ann Batiste" (the "EDFARP") in the TCEQ Chief Clerk's office on December 7, 2011.
7. By letter dated December 7, 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 EDFARP. 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.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP. 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. 26, 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 new MSW and failed to properly dispose of existing MSW at the Facility, resulting in an unauthorized discharge into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1); 30 TEX. ADMIN. CODE § 330.15(c); and TCEQ Default Order Docket No. 2009-1816-MLM-E, Ordering Provisions Nos. 2.a. and 2.b.
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 Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

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 ten thousand four hundred dollars (\$10,400.00) 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 ten thousand four hundred dollars (\$10,400.00) 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: Cynthia Ann Batiste; Docket No. 2011-1765-MLM-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 accepting and disposing of additional MSW at the Facility;
 - b. Within 30 days after the effective date of this Order, Respondent shall remove the MSW located at the Facility and properly dispose of it at an authorized Facility; and
 - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification 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 certifications 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:

Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703

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 STEPHANIE J. FRAZEE

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

"My name is Stephanie J. Frazee. 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.

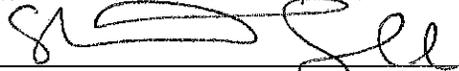
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cynthia Ann Batiste" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 27, 2011.

The EDPRP was mailed to Respondent's last known address on October 27, 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 "refused." 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 Cynthia Ann Batiste" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on December 7, 2011.

The EDFARP was mailed to Respondent's last known address on December 7, 2011, 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).

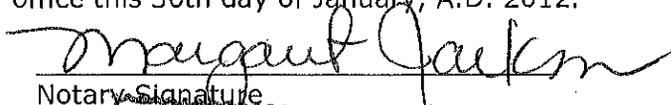
More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP. Respondent failed to file an answer and failed to request a hearing."



Stephanie J. Frazee, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, 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 January, A.D. 2012.



Notary Signature

