

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 41860
GINA LARRANAGA d/b/a A PALLET COMPANY
RN104895933
Docket No. 2011-0975-AIR-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
AIR

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
7325 Pegasus Drive, Temple, Bell County

Type of Operation:
pallet construction and grinding company

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: April 27, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,050

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,050

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

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 23, 2011
Date(s) of NOV(s): March 31, 2010
Date(s) of NOE(s): May 27, 2011

Violation Information

Failed to prevent nuisance dust emissions from impacting off property receptors [TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE § 101.4].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Within 30 days, implement appropriate measures to prevent off property dust emissions.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: December 20, 2011
Date(s) Green Card(s) Signed: Unclaimed
Date(s) Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jeffrey Huhn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Heather Podlipny, Air Enforcement Section, (512) 239-2603

TCEQ Regional Contact: Gary Goldman, Waco Regional Office, (254) 761-3008

Respondent: Gina Larranaga, 7325 Pegasus Drive, Temple, Texas 76501

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	9-Jun-2011	Screening	10-Jun-2011	EPA Due	
	PCW	18-Oct-2011				

RESPONDENT/FACILITY INFORMATION						
Respondent	Gina Larranaga dba A Pallet Company					
Reg. Ent. Ref. No.	RN104895933					
Facility/Site Region	9-Waco	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	41860	No. of Violations	1			
Docket No.	2011-0975-AIR-E	Order Type	1660			
Media Program(s)	Air	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Heather Podlipny			
		EC's Team	Enforcement Team 4			
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	5.0% Enhancement	Subtotals 2, 3, & 7	\$50
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Notes	Enhancement for one NOV with a same/similar violation.
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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	\$48	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,050
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$1,050
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,050
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DEFERRAL		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.
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PAYABLE PENALTY	\$1,050
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Screening Date 10-Jun-2011

Docket No. 2011-0975-AIR-E

PCW

Respondent Gina Larranaga dba A Pallet Company

Policy Revision 2 (September 2002)

Case ID No. 41860

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104895933

Media [Statute] Air

Enf. Coordinator Heather Podlipny

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 a same/similar violation.

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

Screening Date 10-Jun-2011

Docket No. 2011-0975-AIR-E

PCW

Respondent Gina Larranaga dba A Pallet Company

Policy Revision 2 (September 2002)

Case ID No. 41860

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104895933

Media [Statute] Air

Enf. Coordinator Heather Podlipny

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description Failed to prevent nuisance dust emissions from impacting off property receptors. Specifically, lab analysis of samples taken from affected adjacent properties showed the Respondent was found to have contributed to dust emissions emanating from wooden pallet grinding operations. These emissions were documented leaving the property on March 23, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent 0%

Matrix Notes Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels 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 1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended based on the date nuisance dust emissions were 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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$48

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Gina Larranaga dba A Pallet Company
Case ID No. 41860
Req. Ent. Reference No. RN104895933
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				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)	\$1,000	23-Mar-2011	10-Mar-2012	0.97	\$48	n/a	\$48

Notes for DELAYED costs

Estimated cost to develop and implement standard policies and procedures to control dust emissions. The Date Required is the date of the investigation and 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

\$1,000

TOTAL

\$48

Compliance History

Customer/Respondent/Owner-Operator: CN602990814 LARRANAGA, GINA Classification: AVERAGE Rating: 1.33
Regulated Entity: RN104895933 A PALLET COMPANY Classification: AVERAGE Site Rating: 1.33
ID Number(s):
Location: 7325 Pegasus Drive, TEMPLE, TX, 76501
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: June 10, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 10, 2006 to June 10, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Heather Podlipny Phone: 239 - 2603

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 06/16/2010 (803192)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 03/31/2010 (795007)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THSC Chapter 382 382.085(b)
Description: A Notice of Violation (NOV) will be sent to A Pallet Company for failure to comply with the applicable requirements of Title 30 of the Texas Administrative Code §101.4 (Nuisance Rule). A Pallet Company was creating dust that was leaving the property and causing a nuisance condition that was interfering with the normal use of the complainant's property
 - 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
GINA LARRANAGA D/B/A
A PALLET COMPANY;
RN104895933**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-0975-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 Gina Larranaga d/b/a A Pallet Company ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a pallet construction and grinding company located at 7325 Pegasus Drive, in Temple, Bell County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on March 23, 2011, a TCEQ Waco Regional Office investigator documented that Respondent failed to prevent nuisance dust emissions from impacting off property receptors. Specifically, lab analysis of samples taken from affected adjacent properties showed the Plant contributed to dust emissions emanating from wooden pallet grinding operations. These emissions were documented leaving the property on March 23, 2011
3. Respondent received notice of the violations on or about June 1, 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 Gina Larranaga d/b/a A Pallet Company" (the "EDPRP") in the TCEQ Chief Clerk's office on December 20, 2011.
5. By letter dated December 20, 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 prevent nuisance dust emissions from impacting off property receptors, in violation of TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) and 30 TEX. ADMIN. CODE § 101.4.
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 one thousand fifty dollars (\$1,050.00) 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 one thousand fifty dollars (\$1,050.00) 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: Gina Larranaga d/b/a A Pallet Company; Docket No. 2011-0975-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. Within 30 days after the effective date of this Order, Respondent shall implement appropriate measures to prevent off property dust emissions.
 - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification in to demonstrate compliance with Ordering Provision No. 3.a. The certifications 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:

Gary Goldman, Air Section
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, suite 2500
Waco, Texas 76710-7826

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 Plant 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 JEFFREY J. HUHN

STATE OF TEXAS

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COUNTY OF BEXAR

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"My name is Jeffrey J. Huhn. 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 Gina Larranaga d/b/a A Pallet Company" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 20, 2011.

The EDPRP was mailed to Respondent's last known address on December 20, 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.

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

Before me, the undersigned authority, on this day personally appeared Jeffrey J. Huhn, 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 12 day of April, A.D. 2012.

Notary Signature

