

Jose Alberto Trevino
RN104402961
Docket No. 2013-0501-AIR-E

Order Type:

Default Order

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2602 Guatemozin Street, Laredo, Webb County

Type of Operation:

welding shop with surface coating operations

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$1,375.50 (2010-0950-AIR-E; referred for collection)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: August 30, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: \$6,750

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$6,750

Compliance History Classifications:

Person/CN –Unsatisfactory
Site/RN – Unsatisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Jose Alberto Trevino
RN104402961
Docket No. 2013-0501-AIR-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: January 17, 2013
Date(s) of NOV(s): N/A
Date(s) of NOE(s): February 15, 2013

Violation Information

Failed to obtain proper authorization prior to conducting surface coating operations [TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b); 30 TEX. ADMIN. CODE § 116.110(a); and TCEQ Default Order Docket No. 2010-0950-AIR-E, Ordering Provision No. 3.a.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Within 30 days, either obtain proper authorization to operate the Plant, or cease the surface coating operations at the Plant until such time that proper authorization is obtained.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: May 29, 2013
Date Green Card(s) Signed: June 1, 2013
Date Answer(s) Filed: N/A

Contact Information

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

TCEQ Enforcement Coordinator: Kimberly Morales, Enforcement Division, (713) 422-8938

TCEQ Regional Contact: Arnaldo Lanese, Laredo Regional Office, (956) 791-6611

Respondent: Jose Alberto Trevino, 2602 Guatemozin Street, Laredo, Texas 78403

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	19-Feb-2013	
	PCW	22-Jul-2013	
	Screening	7-Mar-2013	
	EPA Due		

RESPONDENT/FACILITY INFORMATION	
Respondent	Jose Alberto Trevino
Reg. Ent. Ref. No.	RN104402961
Facility/Site Region	16-Laredo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39849	No. of Violations	1
Docket No.	2013-0501-AIR-E	Order Type	Findings
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Kimberly Morales
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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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	35.0% Enhancement Subtotals 2, 3, & 7	\$1,750

Notes: Enhancement due to one default order and Unsatisfactory Performer classification.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$83	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$1,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
Reduces or enhances the Final Subtotal by the indicated percentage.			

Notes:

Final Penalty Amount \$6,750

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,750
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)				

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$6,750
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Screening Date 7-Mar-2013

Docket No. 2013-0501-AIR-E

PCW

Respondent Jose Alberto Trevino

Policy Revision 3 (September 2011)

Case ID No. 39849

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104402961

Media [Statute] Air

Enf. Coordinator Kimberly Morales

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	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) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement due to one default order and Unsatisfactory Performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 35%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 35%

Screening Date 7-Mar-2013 **Docket No.** 2013-0501-AIR-E **PCW**
Respondent Jose Alberto Trevino *Policy Revision 3 (September 2011)*
Case ID No. 39849 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN104402961
Media [Statute] Air
Enf. Coordinator Kimberly Morales

Violation Number 1

Rule Cite(s) Default Order Docket No. 2010-0950-AIR-E, Ordering Provision No. 3.a., 30 Tex. Admin. Code § 116.110(a), Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description Failed to obtain proper authorization prior to conducting surface coating operations.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			5.0%

Matrix Notes The Respondent failed to meet 100% of the rule requirement.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 4 349 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Four quarterly events are recommended from the March 23, 2012 effective date of the default order to the March 7, 2013 screening date.

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 \$5,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$83 **Violation Final Penalty Total** \$6,750

This violation Final Assessed Penalty (adjusted for limits) \$6,750

Economic Benefit Worksheet

Respondent Jose Alberto Trevino
Case ID No. 39849
Reg. Ent. Reference No. RN104402961
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	\$1,000	23-Mar-2012	16-Nov-2013	1.65	\$83	n/a	\$83
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to obtain authorization to operate. The date required is the effective date of the default order. The final date is the projected date that corrective actions are projected 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)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$1,000	TOTAL	\$83
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Compliance History Report

PUBLISHED Compliance History Report for CN601515430, RN104402961, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN601515430, Jose Alberto Trevino	Classification:	UNSATISFACTORY	Rating:	75.00
Regulated Entity:	RN104402961, JOSE ALBERTO TREVINO	Classification:	UNSATISFACTORY	Rating:	75.00
Complexity Points:	0	Repeat Violator:	NO		
CH Group:	14 - Other				
Location:	2602 GUATEMOZIN ST LAREDO, TX 78043-4018, WEBB COUNTY				
TCEQ Region:	REGION 16 - LAREDO				
ID Number(s):					

Compliance History Period:	September 01, 2007 to August 31, 2012	Rating Year:	2012	Rating Date:	09/01/2012
Date Compliance History Report Prepared:	April 08, 2013				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	April 08, 2008 to April 08, 2013				

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name:	Kimberly Morales	Phone:	(713) 422-8938
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Site and Owner/Operator History:

- | | |
|--|-----|
| 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 for #2, who is the current owner/operator? | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)? | N/A |
| 5) If YES, when did the change(s) in owner or operator occur? | N/A |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- | | | | | | |
|---|-----------------|--|------------|-----------------|--------------------------|
| 1 | Effective Date: | 03/23/2012 | ADMINORDER | 2010-0950-AIR-E | (Findings Order-Default) |
| | Classification: | Moderate | | | |
| | Citation: | 30 TAC Chapter 116, SubChapter B 116.110(a)
5C THSC Chapter 382 382.0518(a)
5C THSC Chapter 382 382.085(b) | | | |

Description: Failed to obtain proper authorization prior to conducting surface coating operations. Specifically, the TCEQ investigators observed painted metal fencing and containers of paint and the Respondent failed to maintain records to demonstrate that the Plant meets the criteria of a de minimus facility. Thus, the surface coating operations were being conducted prior to obtaining authorization.

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOSE ALBERTO TREVINO;
RN104402961**

**§
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§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-0501-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 Jose Alberto Trevino ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a welding shop with surface coating operations located at 2602 Guatemozin Street in Laredo, Webb 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 January 17, 2013, a TCEQ Laredo Regional Office investigator documented that Respondent failed to obtain proper authorization prior to conducting surface coating operations.
3. Respondent received notice of the violation on or about February 20, 2013.
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 Jose Alberto Trevino" (the "EDPRP") in the TCEQ Chief Clerk's office on May 29, 2013.
5. By letter dated May 29, 2013, sent to Respondent's last known address via certified mail, return receipt requested, 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 June 1, 2013, as evidenced by the signature on the card.
6. More than 20 days have passed 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 obtain proper authorization prior to conducting surface coating operations, in violation of TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b); 30 TEX. ADMIN. CODE § 116.110(a); and TCEQ Default Order Docket No. 2010-0950-AIR-E, Ordering Provision No. 3.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(b)(1).
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 seven hundred fifty dollars (\$6,750.00) 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 six thousand seven hundred fifty dollars (\$6,750.00) 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: Jose Alberto Trevino; Docket No. 2013-0501-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 either obtain proper authorization to operate the Plant, in accordance with 30 TEX. ADMIN. CODE § 116.110(a), or cease the surface coating operations at the Plant until such time that proper authorization is obtained.
 - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 3.a. 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 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:

Arnaldo Lanese, Air Section Manager
Laredo Regional Office
Texas Commission on Environmental Quality
707 East Calton Road, Suite 304
Laredo, Texas 78041-3887

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 ELIZABETH LIEBERKNECHT

STATE OF TEXAS

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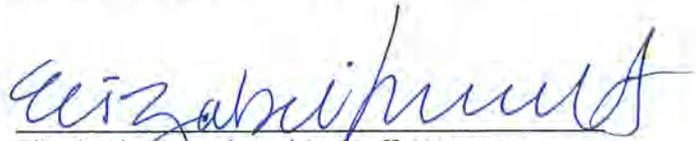
COUNTY OF TRAVIS

"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 Jose Alberto Trevino" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on May 29, 2013.

The EDPRP was mailed to Respondent's last known address on May 29, 2013, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on June 1, 2013, as evidenced by the signature on the card.

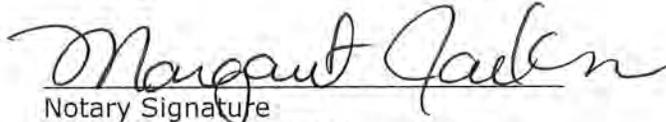
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



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 31 day of July A.D. 2013.



Notary Signature

