

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 26964
River Chase Subdivision II, Ltd.
RN102791662
Docket No. 2012-0733-EAQ-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Middle fork of the San Gabriel River at the extension of River Chase Boulevard, Georgetown, Williamson County

Type of Operation:

residential development/construction site

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: None

Interested Third-Parties: None

Texas Register Publication Date: December 21, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$180,000

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$180,000

Compliance History Classifications:

Person/CN – Average

Site/RN – Average

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: February 24, 2012
Date(s) of NOV(s): N/A
Date(s) of NOE(s): April 7, 2012

Violation Information

Failed to obtain authorization prior to beginning regulated activities over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1) and TCEQ Agreed Order Docket No. 2005-1698-EAQ-E, Ordering Provisions Nos. 2.a. through 2.c].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Within 30 days, submit an administratively complete Water Pollution Abatement Plan ("WPAP") application which reflects the current Site conditions, along with the associated application fee.
2. Within 120 days, submit written certification demonstrating that the WPAP has been approved.

Litigation Information

Date Petition(s) Filed: September 13, 2012
Date Green Card(s) Signed: September 14, 2012
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Scott Humphrey, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Jorge Ibarra, P.E., Enforcement Division, (817) 588-5890

TCEQ Regional Contact: Carolyn Runyon, Austin Regional Office, (512) 339-2929

Respondent: Robert D. Wunsch, President and Director, River Chase Subdivision II, Ltd, 10500 Avery Club Drive, Austin, Texas 78717

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	2-Apr-2012	Screening	3-Apr-2012	EPA Due	
	PCW	10-Apr-2012				

RESPONDENT/FACILITY INFORMATION	
Respondent	River Chase Subdivision II, Ltd.
Reg. Ent. Ref. No.	RN102791662
Facility/Site Region	11-Austin
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	26964	No. of Violations	1
Docket No.	2012-0733-EAQ-E	Order Type	Findings
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$150,000
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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	20.0% Enhancement	Subtotals 2, 3, & 7	\$30,000
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Notes	Enhancement for one Agreed Order containing denial of liability.
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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	\$1,807	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$6,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$180,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$180,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$180,000
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DEFERRAL	0.0%	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	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$180,000
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Screening Date 3-Apr-2012

Docket No. 2012-0733-EAQ-E

PCW

Respondent River Chase Subdivision II, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 26964

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102791662

Media [Statute] Edwards Aquifer

Enf. Coordinator Jorge Ibarra, P.E.

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>)	1	20%
	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) 20%

>> 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 Agreed Order containing denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 3-Apr-2012

Docket No. 2012-0733-EAQ-E

PCW

Respondent River Chase Subdivision II, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 26964

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102791662

Media [Statute] Edwards Aquifer

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1) and TCEQ Agreed Order Docket No. 2005-1698 EAQ-E, Ordering Provision Nos. 2.a. through 2.c.

Violation Description Failed to obtain authorization prior to beginning regulated activities over the Edwards Aquifer Recharge Zone. Specifically, an estimated 57.1 acres project was commenced without prior authorization.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 60 1817 Number of violation days

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

Violation Base Penalty \$150,000

Sixty monthly events are recommended from the effective date of the Agreed Order, April 13, 2007, to the screening date of April 3, 2012.

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 good faith criteria for this violation.

Violation Subtotal \$150,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,807

Violation Final Penalty Total \$180,000

This violation Final Assessed Penalty (adjusted for limits) \$180,000

Economic Benefit Worksheet

Respondent River Chase Subdivision II, Ltd.
Case ID No. 26964
Reg. Ent. Reference No. RN102791662
Media Edwards Aquifer
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)	\$6,500	13-Apr-2007	1-Nov-2012	5.56	\$1,807	n/a	\$1,807

Notes for DELAYED costs

Estimated cost to prepare and submit an Edwards Aquifer Pollution Prevention Plan application and obtain approval. Date required is the effective date of the Agreed Order and the final date is the expected compliance date.

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

\$6,500

TOTAL

\$1,807

Compliance History Report

Customer/Respondent/Owner-Operator: CN601477961 River Chase Subdivision II, Ltd. Classification: AVERAGE Rating: 15.00
Regulated Entity: RN102791662 RIVER CHASE II SUBDIVISION Classification: AVERAGE Site Rating: 15.00
ID Number(s): EDWARDS AQUIFER REGISTRATION 11-02061001
Location: Extension of River Chase Boulevard, Williamson County, Texas
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: April 10, 2012
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 10, 2007 to April 10, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

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. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 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: 04/13/2007 ADMINORDER 2005-1698-EAQ-E
Classification: Minor
Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
Description: Failure to obtain approval of a Water Pollution Abatement Plan prior to the start of construction on the Edwards Aquifer Recharge Zone.
- 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 | 10/10/2011 | (959010) |
| 2 | 03/30/2012 | (988943) |
- 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
RIVER CHASE
SUBDIVISION II, LTD.;
RN102791662**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2012-0733-EAQ-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 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 River Chase Subdivision II, Ltd. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a residential development/construction site located along the Middle Fork of the San Gabriel River at the extension of River Chase Boulevard in Georgetown, Williamson County, Texas (the "Site"). The site adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 26.001(5).
2. During a record review conducted of February 24, 2012, a TCEQ Austin Regional Office investigator documented that Respondent failed to obtain authorization prior to beginning regulated activities over the Edwards Aquifer Recharge Zone. Specifically, an estimated 57.1 acre residential construction project was commenced without prior authorization.
3. Respondent received notice of the violation on or about April 12, 2012.
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 River Chase Subdivision II, Ltd." (the "EDPRP") in the TCEQ Chief Clerk's Office on September 13, 2012.
5. By letter dated September 13, 2012, 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 September 14, 2012, as evidenced by the signature on the card.

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. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to obtain authorization prior to beginning regulated activities over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1) and TCEQ Agreed Order Docket No. 2005-1698-EAQ-E, Ordering Provisions Nos. 2.a. through 2.c.
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 one hundred eighty thousand dollars (\$180,000.00) 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 hundred eighty thousand dollars (\$180,000.00) 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: River Chase Subdivision II, Ltd.; Docket No. 2012-0733-EAQ-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 of the effective date of this Order, Respondent shall submit an administratively complete Water Pollution Abatement Plan ("WPAP") application which reflects the current Site conditions, along with the associated application fee to:

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the WPAP application within 30 days after the date of such requests or by any other deadline specified by the TCEQ in writing.
- c. Within 120 days after the effective date of this Order, Respondent shall submit written certification demonstrating that the WPAP has been approved. 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:

Carolyn Runyon, Water Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
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 Site operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOVT. 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 JIM SALLANS

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Jim Sallans. 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 River Chase Subdivision II, Ltd" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 13, 2012.

The EDPRP was mailed to Respondent's last known address on September 13, 2012, 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 September 14, 2012, as evidenced by the signature on the card.

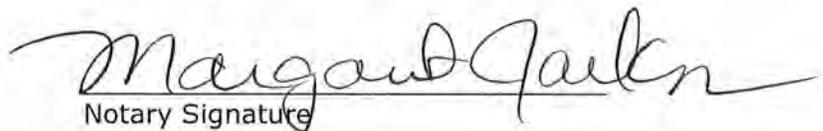
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.



Jim Sallans, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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 26 day of November, A.D. 2012.



Notary Signature

