

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 45927
ASDH Group, Inc. d/b/a Swift Mart
RN101892891
Docket No. 2013-0055-PST-E

Order Type:

Default Order

Media:

Petroleum Storage Tank

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

1100 Wilson Road, Humble, Harris County

Type of Operation:

convenience store with retail sales of gasoline

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: November 8, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,380

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,380

Compliance History Classifications:

Person/CN – Not Applicable
Site/RN – Not Applicable

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: April 11, 2012
Date(s) of NOV(s): N/A
Date(s) of NOE(s): November 13, 2012

Violation Information

Failed to monitor the USTs for releases at frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the pressurized piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that Respondent no longer owns or operates the Facility as of May 9, 2012.

Technical Requirements: N/A

Litigation Information

Date Petition(s) Filed: June 6, 2013; June 25, 2013
Date Green Card(s) Signed: unclaimed; unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Tammy Mitchell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Jennifer Graves, Enforcement Division, (956) 430-6023
TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3500
Respondent: Amir Khan, President, ASDH Group, Inc., P.O. Box 36770, Houston, Texas 77236
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	7-Jan-2013		
	PCW	6-May-2013	Screening	7-Jan-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	ASDH Group, Inc. dba Swift Mart
Reg. Ent. Ref. No.	RN101892891
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	45927	No. of Violations	1
Docket No.	2013-0055-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jennifer Graves
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,750
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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	0.0% Enhancement Subtotals 2, 3, & 7 \$0

Notes	No adjustment for compliance history.
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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	\$1,630	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,618	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	43.5%	Adjustment	\$1,630
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Reduces or enhances the Final Subtotal by the indicated percentage.		
Notes	Enhancement for avoided costs of compliance associated with the violation.	
	Final Penalty Amount	\$5,380

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,380
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)	
Notes	Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$5,380
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Screening Date 7-Jan-2013

Docket No. 2013-0055-PST-E

PCW

Respondent ASDH Group, Inc. dba Swift Mart

Policy Revision 3 (September 2011)

Case ID No. 45927

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101892891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jennifer Graves

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date	7-Jan-2013	Docket No.	2013-0055-PST-E	PCW
Respondent	ASDH Group, Inc. dba Swift Mart		<i>Policy Revision 3 (September 2011)</i>	
Case ID No.	45927	<i>PCW Revision August 3, 2011</i>		
Reg. Ent. Reference No.	RN101892891			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jennifer Graves			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Harm				Percent <input type="text" value="15.0%"/>
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0.0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)	

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent ASDH Group, Inc. dba Swift Mart
Case ID No. 45927
Reg. Ent. Reference No. RN101892891
Media Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,500	11-Apr-2012	9-May-2012	0.00	\$0	\$1,500	\$1,500
Other (as needed)	\$118	11-Apr-2011	1-May-2012	1.98	\$12	\$118	\$130

Notes for AVOIDED costs

Estimated avoided cost of providing release detection for the USTs. The date required is the investigation date. The final date is the date of ownership change. Estimated avoided cost of conducting line leak detector and line tightness tests (\$118). The date required is one year prior to the investigation date and the final date is the compliance date.

Approx. Cost of Compliance

\$1,618

TOTAL

\$1,630



Compliance History Report

PUBLISHED Compliance History Report for CN603559386, RN101892891, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN603559386, ASDH Group, Inc.	Classification:	NOT APPLICABLE	Rating:	N/A
Regulated Entity:	RN101892891, SWIFT MART	Classification:	NOT APPLICABLE	Rating:	N/A
Complexity Points:	N/A	Repeat Violator:	N/A		
CH Group:	14 - Other				
Location:	1100 WILSON RD HUMBLE, TX 77338-5109, HARRIS COUNTY				
TCEQ Region:	REGION 12 - HOUSTON				
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 65569				

Compliance History Period:	September 01, 2007 to August 31, 2012	Rating Year:	2012	Rating Date:	09/01/2012
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Date Compliance History Report Prepared:	February 15, 2013
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Agency Decision Requiring Compliance History:	Enforcement
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Component Period Selected:	February 15, 2008 to February 15, 2013
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TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Jennifer Graves

Phone: (956) 430-6023

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? YES
- 3) If YES for #2, who is the current owner/operator? Neptune International Inc. OWNER OPERATOR since 5/9/2012
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? ASDH Group, Inc., OWNER OPERATOR, 4/19/2008 to 5/8/2012
K I Enterprises Inc., OWNER OPERATOR, 8/31/1999 to 4/18/2008
- 5) If YES, when did the change(s) in owner or operator occur? 5/9/2012

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

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

N/A

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
ASDH GROUP, INC. D/B/A
SWIFT MART;
RN101892891**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-0055-PST-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. The respondent made the subject of this Order is ASDH Group, Inc. d/b/a Swift Mart ("Respondent").

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

FINDINGS OF FACT

1. Respondent owned and operated, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 1100 Wilson Road in Humble, Harris County, Texas (Facility ID No. 65569) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on April 11, 2012, a UT Arlington PST Program investigator documented that Respondent failed to monitor the USTs for releases at frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the pressurized piping associated with the UST system by failing to conduct the line leak detector and piping tightness tests.
3. Respondent received notice of the violation on or about November 18, 2012.
4. The Executive Director recognizes that Respondent no longer owns or operates the Facility as of May 9, 2012.
5. 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 ASDH Group, Inc. d/b/a Swift Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on June 6, 2013.
6. The EDPRP was mailed to Respondent's last known address on June 6, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

7. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on June 25, 2013.
8. By letter dated June 25, 2013, 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.
9. 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 monitor the USTs for releases at frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the pressurized piping associated with the UST system, in violation of TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2).
3. As evidenced by Findings of Fact Nos. 5 through 8, 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. 9, 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 five thousand three hundred eighty dollars (\$5,380.00) 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 five thousand three hundred eighty dollars (\$5,380.00) 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: ASDH Group, Inc. d/b/a Swift Mart; Docket No. 2013-0055-PST-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. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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 JACQUELYN BOUTWELL

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

"My name is Jacquelyn Boutwell. 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.

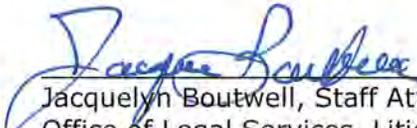
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against ASDH Group, Inc. d/b/a Swift Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 6, 2013.

The EDPRP was mailed to Respondent's last known address on June 6, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on June 25, 2013.

The EDPRP was mailed to Respondent's last known address on June 25, 2013, 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).

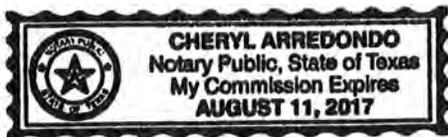
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Jacquelyn Boutwell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, 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 11th day of October, A.D. 2013.



Notary without Bond



Notary Signature