

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 47557
Keywinn Development LLC
RN106327521
Docket No. 2013-1653-MSW-E

Order Type:

Default Order

Media:

Municipal Solid Waste

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

105 Dennis Road, Weatherford, Parker County

Type of Operation:

unauthorized municipal solid waste disposal 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: May 23, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$7,500

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$7,500

Compliance History Classifications:

Person/CN – N/A

Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Keywinn Development LLC
RN106327521
Docket No. 2013-1653-MSW-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: August 19, 2013
Date(s) of NOV(s): N/A
Date(s) of NOE(s): August 21, 2013

Violation Information

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") (approx. 18,003 cu/yd. [3,600 tons] of asphalt shingles, 55 wood pallets, 40 cu/yd. of plastic and wood construction debris, and a plastic tote) [30 TEX. ADMIN. CODE §§ 330.7(a) and 330.15(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Immediately cease disposing of any additional MSW at the Site.
2. Within 45 days, remove all MSW from the Site and dispose of it at an authorized facility.
3. Within 60 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: January 31, 2014
Date Green Card(s) Signed: February 4, 2014
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Danielle Porrás, Enforcement Division, (713) 767-3682

TCEQ Regional Contact: Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5903

Respondent: Steve A. Keys, Director, Keywinn Development LLC, 2625 8th Avenue, Suite 100, Fort Worth, Texas 76110

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	26-Aug-2013		
	PCW	1-Oct-2013	Screening	4-Sep-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Keywinn Development LLC
Reg. Ent. Ref. No.	RN106327521
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	47557	No. of Violations	1
Docket No.	2013-1653-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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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
Notes	No adjustment for compliance history.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$8,145	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$214,639		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,500
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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	\$7,500	

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,500
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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	\$7,500
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Screening Date 4-Sep-2013

Docket No. 2013-1653-MSW-E

PCW

Respondent Keywinn Development LLC

Policy Revision 3 (September 2011)

Case ID No. 47557

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106327521

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

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	4-Sep-2013	Docket No.	2013-1653-MSW-E	PCW
Respondent	Keywinn Development LLC			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	47557			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN106327521			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Danielle Porras			

Violation Number

Rule Cite(s)

30 Tex. Admin. Code §§ 330.15(c) and 330.7(a)

Violation Description

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 18,003 cubic yards (3,600 tons) of MSW including asphalt shingles, 55 wood pallets, 40 cubic yards of plastic and wood construction debris, and a plastic tote were disposed of at the Site.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

daily	<input type="checkbox"/>
weekly	<input type="checkbox"/>
monthly	<input checked="" type="checkbox"/>
quarterly	<input type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input type="checkbox"/>

mark only one with an x

Violation Base Penalty

One monthly event is recommended from the August 19, 2013 record review to the September 4, 2013 screening date.

Good Faith Efforts to Comply

Reduction

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

Notes

The Respondent does not meet the good faith criteria for this violation.

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 Keywinn Development LLC
Case ID No. 47557
Reg. Ent. Reference No. RN106327521
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
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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	\$214,639	19-Aug-2013	23-May-2014	0.76	\$8,145	n/a	\$8,145
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the MSW and dispose of it at a facility authorized to accept the waste. The date required is the record review date 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

\$214,639

TOTAL

\$8,145

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN604065607, RN106327521, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent,
or Owner/Operator:**

CN604065607, Keywinn Development LLC

Classification: N/A

Rating: N/A

Regulated Entity:

RN106327521, HD Recycling

Classification: N/A

Rating: N/A

Complexity Points:

N/A

Repeat Violator: N/A

CH Group:

14 - Other

Location:

105 DENNIS RD WEATHERFORD, TX 76087-9059, PARKER COUNTY

TCEQ Region:

REGION 04 - DFW METROPLEX

ID Number(s):

MUNICIPAL SOLID WASTE PROCESSING REGISTRATION 100342

AIR NEW SOURCE PERMITS REGISTRATION 100634

Compliance History Period: September 01, 2007 to August 31, 2012

Rating Year: 2012

Rating Date: 9/1/2012

Date Compliance History Report Prepared: August 30, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 30, 2008 to August 30, 2013

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

Name: Danielle Porras

Phone: (713) 767-3682

Site and Owner/Operator History:

- | | |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | NO |
| 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:

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KEYWINN DEVELOPMENT LLC;
RN106327521**

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§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-1653-MSW-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. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Keywinn Development LLC ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns property with an unauthorized municipal solid waste site located at 105 Dennis Road in Weatherford, Parker County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During a record review conducted on August 19, 2013, TCEQ staff documented that Respondent failed to prevent the unauthorized disposal of MSW. Specifically, approximately 18,003 cubic yards (3,600 tons) of MSW including asphalt shingles, 55 wood pallets, 40 cubic yards of plastic and wood construction debris, and a plastic tote were disposed of at the Site.
3. Respondent received notice of the violation on or about August 26, 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 Keywinn Development LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on January 31, 2014.
5. By letter dated January 31, 2014, 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 USPS.com "Track & Confirm" delivery confirmation records, Respondent signed the certified mail "green card" on February 4, 2014.
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. 361 and the rules of the TCEQ.

2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE §§ 330.7(a) and 330.15(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(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 TCEQ'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 seven thousand five hundred dollars (\$7,500.00) 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 seven thousand five hundred dollars (\$7,500.00) 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: Keywinn Development LLC; Docket No. 2013-1653-MSW-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall cease disposing of any additional MSW at the Site.
 - b. Within 45 days after the effective date of this Order, Respondent shall remove all MSW from the Site and dispose of the MSW at an authorized facility.

- c. Within 60 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written 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:

Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth TX 76118-6951

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. 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 JENNIFER COOK

STATE OF TEXAS

§

COUNTY OF TRAVIS

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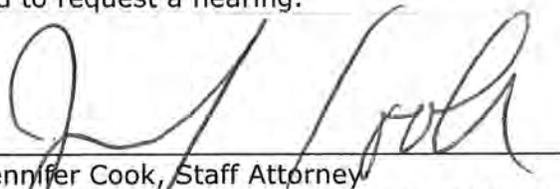
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"My name is Jennifer Cook. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 Keywinn Development LLC" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 31, 2014.

The EDPRP was mailed to Respondent's last known address on January 31, 2014, via certified mail, return receipt requested, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent signed the certified mail "green card" on February 4, 2014.

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."



Jennifer Cook, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jennifer Cook, 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 29th day of April, A.D. 2014.



Notary Signature

