

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 50578
SCHMIDT LAND SERVICES, INC.
RN107305567
Docket No. 2015-0784-WQ-E

Order Type:

Default Order

Media:

WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

1105 Simmons Avenue, Jourdanton, Atascosa County

Type of Operation:

maintenance facility with industrial cleaning activities

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: \$220 (Storm Water Permit, Account No. 20043227);

\$220 (Storm Water Permit, Account No. 20043228)

Other: None

Interested Third-Parties: None

Texas Register Publication Date: April 8, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,312

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,312

Compliance History Classifications:

Person/CN – Satisfactory

Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): March 26, 2014; February 26, 2015
Complaint Information: Alleged respondent was washing large equipment and vehicles and allowing the wash water to leave the facility, impacting streets, culverts, and soil, and entering a nearby storm drain.

Date(s) of Investigation: May 22, 2014; March 16, 2015
Date(s) of NOV(s): July 18, 2014
Date(s) of NOE(s): May 20, 2015

Violation Information

Failed to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state [TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days, implement a method to prevent wastewater from discharging into or adjacent to any water in the state.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: January 7, 2016
Date Green Card(s) Signed: January 11, 2016; January 12, 2016
Date Answer(s) Filed: N/A

Contact Information

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

TCEQ Enforcement Coordinator: Farhaud Abbaszadeh, Enforcement Division, (512) 239-0779

TCEQ Regional Contact: Lynn Bumguardner, San Antonio Regional Office, (210) 490-3096

Respondent Contact:

Walker Schmidt, Partner, SCHMIDT LAND SERVICES, INC., 1105 Simmons Avenue, Jourdanton, Texas 78026;

Walker Schmidt, Partner, SCHMIDT LAND SERVICES, INC., 201 North Bryant Street, Pleasanton, Texas 78064

Respondent's Attorney: N/A

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Compliance History Report

PUBLISHED Compliance History Report for CN603223785, RN107305567, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN603223785, SCHMIDT LAND SERVICES, INC. **Classification:** SATISFACTORY **Rating:** 0.66

Regulated Entity: RN107305567, SCHMIDT LAND SERVICE **Classification:** SATISFACTORY **Rating:** 1.33

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 1105 SIMMONS AVENUE, JOURDANTON, ATASCOSA COUNTY, TEXAS

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s): **WATER QUALITY NON PERMITTED** ID NUMBER R13107305567

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: May 22, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 22, 2010 to May 22, 2015

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

Name: Farhaud Abbaszadeh

Phone: (512) 239-0779

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:

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.

1 Date: 07/18/2014 (1171122) CN603223785

Self Report? NO Classification: Moderate

Citation: TWC Chapter 26 26.121

Description: Failure to prevent unauthorized discharges of wastewater from the washing of large heavy equipment and the testing of fiberglass tanks on large equipment.

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



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	18-May-2015		
	PCW	4-Jan-2016	Screening	22-May-2015
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	SCHMIDT LAND SERVICES, INC.
Reg. Ent. Ref. No.	RN107305567
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	50578	No. of Violations	1
Docket No.	2015-0784-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Farhaud Abbaszadeh
		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	\$1,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$62
Notes	Enhancement for one NOV with same/similar violations.		
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
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$334	*Capped at the Total EB \$ Amount	
Estimated Cost of Compliance	\$5,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,312
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
	Final Penalty Amount \$1,312

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,312
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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.
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PAYABLE PENALTY	\$1,312
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Screening Date 22-May-2015

Docket No. 2015-0784-WQ-E

PCW

Respondent SCHMIDT LAND SERVICES, INC.

Policy Revision 4 (April 2014)

Case ID No. 50578

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107305567

Media [Statute] Water Quality

Enf. Coordinator Farhaud Abbaszadeh

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same/similar violations.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 5%

Screening Date 22-May-2015
Respondent SCHMIDT LAND SERVICES, INC.
Case ID No. 50578
Reg. Ent. Reference No. RN107305567
Media [Statute] Water Quality
Enf. Coordinator Farhaud Abbaszadeh

Docket No. 2015-0784-WQ-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number

Rule Cite(s)

Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state, as documented during an investigation conducted on March 16, 2015. Specifically, the Respondent washes down heavy equipment, vehicles, and machinery at the Site and allows the wastewater to discharge from the Site.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

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"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended from the investigation date (March 16, 2015) to the screening date (May 22, 2015).

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(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 SCHMIDT LAND SERVICES, INC.
Case ID No. 50578
Reg. Ent. Reference No. RN107305567
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$5,000	16-Mar-2015	27-Feb-2016	0.95	\$16	\$318	\$334
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 Estimated cost to implement a method to capture excess runoff water and prevent unauthorized discharges. Date required is the investigation date. 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 \$5,000

TOTAL \$334

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SCHMIDT LAND SERVICES, INC.;
RN107305567**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-0784-WQ-E

On _____, 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 SCHMIDT LAND SERVICES, INC. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a maintenance facility with industrial cleaning activities located at 1105 Simmons Avenue in Jourdanton, Atascosa County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During investigations conducted on May 22, 2014 and March 16, 2015, an investigator documented that Respondent failed to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state. Specifically, Respondent washes down heavy equipment, vehicles, and machinery at the Site and allows the wastewater to discharge from the Site.
3. 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 SCHMIDT LAND SERVICES, INC." (the "EDPRP") in the TCEQ Chief Clerk's office on January 7, 2016.
4. By letter dated January 7, 2016, sent to Respondent's last known addresses 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 January 11, 2016 and January 12, 2016, as evidenced by the signatures on the cards.
5. 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 TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).

3. As evidenced by Findings of Fact Nos. 3 and 4, 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. 5, 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 one thousand three hundred twelve dollars (\$1,312.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of one thousand three hundred twelve dollars (\$1,312.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The 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 TCEQ and shall be sent with the notation "Re: SCHMIDT LAND SERVICES, INC.; Docket No. 2015-0784-WQ-E" to:

Financial Administration Division, Revenue Operations 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, implement a method to prevent wastewater from discharging into or adjacent to any water in the state.
 - b. Within 45 days after the effective date of this Order, 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 signed by Respondent, 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."

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

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. 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. 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.
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 fully executed 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

AFFIDAVIT OF ELIZABETH LIEBERKNECHT

STATE OF TEXAS

§

COUNTY OF TRAVIS

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§

"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 SCHMIDT LAND SERVICES, INC." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 7, 2016.

The EDPRP was mailed to Respondent's last known address on January 7, 2016, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green cards," Respondent received notice of the EDPRP on January 11, 2016 and January 12, 2016, as evidenced by the signature on the cards.

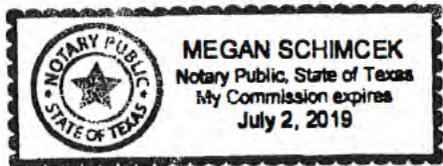
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

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.

Subscribed and sworn to before me on this 15th day of March, A.D. 2016.

Notary Public, State of Texas



Notary Without Bond