

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 30, 2022

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: IN THE MATTER OF THE MOTION FOR REHEARING FILED BY
MADISON RIDLEHUBER REGARDING A DEFAULT ORDER
CONCERNING ANN RIDLEHUBER
TCEQ DOCKET NO. 2020-0875-IHW-E**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to the Motion to Set Aside the Default Order in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2020-0875-IHW-E

**EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner**

vs.

**ANN RIDLEHUBER,
Respondent**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO MOTION TO SET ASIDE DEFAULT ORDER**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Respondent’s Motion to Set Aside Default Order in the above-captioned matter and respectfully submits the following:

I. INTRODUCTION

A. Summary of Position

Before the Commission is a Motion to Set Aside Default Order filed by Attorney James Rainey on behalf of Madison Ridlehuber, temporary Guardian of Ann Ridlehuber. Having considered the evidence, OPIC respectfully recommends the Commission grant Respondent’s Motion to Set Aside Default Order and remand this matter to the Executive Director (ED).

B. Procedural Background

On May 13, 2020 an investigation was conducted regarding a former metal plating operation (Facility) owned by Respondent, Ann Ridlehuber. The Facility is located at 718 Abbott Avenue in Hillsboro and involves the management of industrial hazardous waste (IHW). Four

violations were documented, and an administrative penalty of \$26,250.00 was assessed. The ED filed the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an Enforcement Order assessing an administrative penalty against and requiring certain actions of Ann Ridlehuber on June 25, 2021. A first amended EDPRP (EDFARP) was filed on August 19, 2021 and refiled on May 20, 2022. In addition, the ED sent notice of the EDFARP to Respondent via certified mail, return receipt requested on May 20, 2022. United States Postal Services tracking records indicate Respondent received notice of the EDFARP on June 14, 2022, but ED's executive summary shows that all green cards from certified mailings sent to Respondent were unclaimed. In addition, the ED filed a Request for Remand on May 17, 2022 asking for additional time for further case development, and the Commission ordered the matter remanded on May 19, 2022 pursuant to the ED's request. Respondent did not file an answer or request for hearing in response to the EDFARP nor did Respondent appear when the matter was considered at the June 1, 2022 Agenda Meeting. The Commission entered a Default Order on August 24, 2022 detailing the imposition of administrative penalties and corrective actions required of Respondent. On September 7, 2022, attorney James Rainey filed a Motion to Set Aside Default Order on behalf of Madison Ridlehuber, court appointed temporary Guardian of Ann Ridlehuber.

II. APPLICABLE LAW

A motion for rehearing must identify, with particularity, the findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous.¹

III. DISCUSSION

¹See Texas Government Code 2001.146. See also, 30 Texas Administrative Code §50.119.

A Motion to Set Aside Default Order was timely filed by attorney James Rainey on behalf of Madison Ridlehuber on September 7, 2022 detailing Respondent's explanation for Ann Ridlehuber's failure to request a contested case hearing or otherwise respond to notice of the EDFARP. The motion concerns the Default Order entered by the Commission on August 25, 2022 involving a former metal plating facility owned by Ann Ridlehuber, and alleged violations of Texas Water Code Ch. 7 and 26, Texas Health & Safety Code Ch. 361, and the rules of the TCEQ pertaining to the management of industrial hazardous waste (IHW). Per the Motion, Ann Ridlehuber suffers from dementia and currently resides in an assisted living facility or nursing home, where she has lived for nearly a year. Further, Madison Ridlehuber states that she is in the process of being appointed as permanent Guardian for Ann Ridlehuber, as the latter is no longer capable of handling her financial or personal affairs. Attached to Respondent's Motion is a Temporary Order Appointing Guardianship of the Person and Estate reflecting Madison Ridlehuber's status as temporary Guardian of Ann Ridlehuber's affairs and person. Madison Ridlehuber further notes she first learned of the Commission's Default Order regarding Ann Ridlehuber when a concerned citizen checked the mailbox and forwarded her the letter dated August 29, 2022. Given the evidence of Ann Ridlehuber's lack of capacity to properly respond to the EDFARP, OPIC finds that remand of this matter is appropriate, and recommends the Commission grant Respondent's pending Motion to Set Aside Default Order.

IV. CONCLUSION

Having found that Respondent's Motion outlines a reasonable basis for rehearing consistent with the requirements of Texas Government Code § 2001.146, OPIC respectfully recommends the Commission grant the pending Motion to Set Aside Default Order and remand this matter to the Executive Director.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2022 the original of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Jennifer Jamison

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