

Elsa Pirkle

RN109290684

Docket No. 2017-1679-MSW-E

Order Type:

Default Order

Media:

MSW

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

505 West Anderson Road, Donna, Hidalgo County

Type of Operation:

property involved in management of municipal solid waste ("MSW")

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: March 8, 2019**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$11,250**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$11,250**Compliance History Classifications:**

Person/CN – Unclassified

Site/RN – Unclassified

Major Source: No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** April 2014

Elsa Pirkle
RN109290684
Docket No. 2017-1679-MSW-E

Investigation Information

Complaint Date(s): May 24, 2016; August 31, 2017
Complaint Information:
May 24, 2016 Complainant alleges that truckloads with tires, insulation and construction debris is being burned and/or buried on property; Complainant alleges unauthorized disposal of C&D waste onto property by 18-wheeler trucks. May potentially burn waste.
August 31, 2017
Date(s) of Investigation: June 10, 2016; September 6, 2017
Date(s) of NOV(s): N/A
Date(s) of NOE(s): November 10, 2017

Violation Information

Caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 1,470 cubic yards of MSW consisting of scrap tires, shingles, household waste, steel door frames, televisions, plastic chairs, an empty gasoline can, empty plastic buckets, insulation, construction material, wood pallets, a dog house, and brush were disposed of at the Site. [30 TEX. ADMIN. CODE § 330.15(a) and (c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately, cease allowing disposal of any additional MSW at the Site;
2. Within 30 days, remove all MSW from the Site and dispose of it at an authorized facility; and
3. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1. and 2.

Litigation Information

Date Petition(s) Filed: July 26, 2018
Date Green Card(s) Signed: July 28, 2018
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jake Marx, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Division Agenda Coordinator: Janice Hernandez, (512) 239-2575
TCEQ Enforcement Coordinator: Tyler Gerhardt, Enforcement Division, (512) 239-2454
TCEQ Regional Contact: Francisco Chavero, Harlingen Regional Office, (956) 425-6010
Respondent Contact: Elsa Pirkle, 1710 East Mile 9 North, Donna, Texas 78537,
elsaeperez3@gmail.com
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	20-Nov-2017		
	PCW	20-Mar-2018	Screening	21-Nov-2017
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Elsa Pirkle	
Reg. Ent. Ref. No.	RN109290684	
Facility/Site Region	15-Harlingen	Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No.	55391	No. of Violations	1
Docket No.	2017-1679-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jonathan Nguyen
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,250
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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	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
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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	\$1,907
Estimated Cost of Compliance	\$17,442

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,250
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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	
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Final Penalty Amount	\$11,250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,250
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$11,250
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Screening Date	21-Nov-2017	Docket No.	2017-1679-MSW-E	PCW
Respondent	Elsa Pirkle			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	55391			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN109290684			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Jonathan Nguyen			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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 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%
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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 21-Nov-2017 Respondent Elsa Pirkle Case ID No. 55391 Reg. Ent. Reference No. RN109290684 Media [Statute] Municipal Solid Waste Enf. Coordinator Jonathan Nguyen	Docket No. 2017-1679-MSW-E	PCW <i>Policy Revision 4 (April 2014)</i> <i>PCW Revision March 26, 2014</i>
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Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code § 330.15(a) and (c)	
Violation Description	The Respondent caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 1,470 cubic yards of MSW consisting of scrap tires, shingles, household waste, steel door frames, televisions, plastic chairs, an empty gasoline can, empty plastic buckets, insulation, construction material, wood pallets, a dog house, and brush were disposed of at the Site.	

Base Penalty	\$25,000
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>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	x			Percent 15.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

Matrix Notes	Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.
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Adjustment	\$21,250
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	\$3,750
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Violation Events

Number of Violation Events	3	76	Number of violation days
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	daily				Violation Base Penalty \$11,250
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				

Three monthly events are recommended based on documentation of the violation during the investigation conducted on September 6, 2017 to the screening date of November 21, 2017.
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Good Faith Efforts to Comply

	0.0%	
		Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary			
N/A	x		
Notes	The Respondent does not meet the good faith criteria for this violation.		

Violation Subtotal	\$11,250
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Economic Benefit (EB) for this violation

Estimated EB Amount	\$1,907
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Statutory Limit Test

Violation Final Penalty Total	\$11,250
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This violation Final Assessed Penalty (adjusted for limits)	\$11,250
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Economic Benefit Worksheet

Respondent Elsa Pirkle
Case ID No. 55391
Reg. Ent. Reference No. RN109290684
Media Municipal Solid Waste
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	\$17,442	10-Jun-2016	17-Aug-2018	2.19	\$1,907	n/a	\$1,907
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of the MSW at an authorized facility. The date required is the initial investigation 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

\$17,442

TOTAL

\$1,907

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.



TCEQ Compliance History Report

Compliance History Report for CN605198068, RN109290684, Rating Year 2017 which includes Compliance History (CH) components from September 1, 2012, through August 31, 2017.

Customer, Respondent, or Owner/Operator: CN605198068, Pirkle, Elsa

Classification: UNCLASSIFIED

Rating: -----

Regulated Entity: RN109290684, Pirkle, Elsa

Classification: UNCLASSIFIED

Rating: -----

Complexity Points: 0

Repeat Violator: NO

CH Group: 14 - Other

Location: 505 West Anderson Road, Donna, Texas 78537-7188, HIDALGO COUNTY

TCEQ Region: REGION 15 - HARLINGEN

ID Number(s):

MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
R15109290684

Compliance History Period: September 01, 2012 to August 31, 2017

Rating Year: 2017

Rating Date: 09/01/2017

Date Compliance History Report Prepared: November 20, 2017

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 20, 2012 to November 20, 2017

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

Name: Jonathan Nguyen

Phone: (512) 239-1661

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 |

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
ELSA PIRKLE;
RN109290684**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2017-1679-MSW-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 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 Elsa Pirkle ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns real property involved in management of municipal solid waste ("MSW") located at 505 West Anderson Road in Donna, Hidalgo County, Texas (the "Site"). The Site contains and/or involves the management of MSW including scrap tires, as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During investigations conducted on June 10, 2016, and September 6, 2017, TCEQ investigators documented that Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW. Specifically, approximately 1,470 cubic yards of MSW consisting of scrap tires, shingles, household waste, steel door frames, televisions, plastic chairs, an empty gasoline can, empty plastic buckets, insulation, construction material, wood pallets, a dog house, and brush were disposed of at 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 Elsa Pirkle" (the "EDPRP") in the TCEQ Chief Clerk's office on July 26, 2018.
4. The EDPRP was mailed to Respondent's last known address on July 26, 2018, via certified mail, return receipt requested, postage prepaid. By letter dated July 26, 2018, 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 the return receipt "green card," Respondent received notice of the EDPRP on July 28, 2018, as evidenced by the signature on the card. According to USPS.com "Track & Confirm" delivery

confirmation records, Respondent received notice of the EDPRP on July 28, 2018.

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. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent caused, suffered, allowed, or permitted the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(a) and (c).
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 eleven thousand two hundred fifty dollars (\$11,250.00) 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 eleven thousand two hundred fifty dollars (\$11,250.00) 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: Elsa Pirkle; Docket No. 2017-1679-MSW-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. Immediately upon the effective date of this Order, cease allowing disposal of any additional MSW at the Site;
 - b. Within 30 days after the effective date of this Order, remove all MSW from the Site and dispose of it at an authorized facility; and
 - c. Within 45 days after the effective date of this Order, 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 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:

Waste Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, 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. 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. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. 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.
11. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

AFFIDAVIT OF JAKE MARX

STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

"My name is Jake Marx. 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 Elsa Pirkle" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 26, 2018.

The EDPRP was mailed to Respondent's last known address on July 26, 2018, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on July 28, 2018, as evidenced by the signature on the card. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on July 28, 2018.

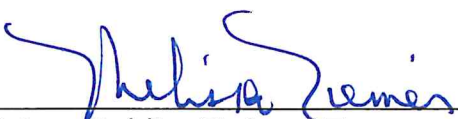
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



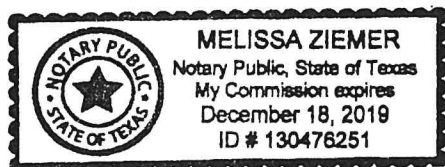
Jake Marx, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jake Marx, 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.

Subscribed and sworn to before me on this 25th day of March, A.D. 2019.



Notary Public, State of Texas



NOTARY WITHOUT BOND