UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

In the Matter of:	)	
	)	
Gaskey Construction Corporation,	)	Docket No. CWA-06-2004-2335
	)	
Respondent.	)	

INITIAL DECISION AND DEFAULT ORDER

This is a proceeding under Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), for violation of Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants into waters of the United States without a permit. The proceeding is governed by procedures set forth in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules") codified at 40 C.F.R. Part 22. Complainant, the Chief of the Water Enforcement Branch of the Compliance Assurance and Enforcement Division of United States Environmental Protection Agency Region 6, has filed Complainant's Motion for Default as to Liability and Penalty ("Motion for Default") seeking a default order finding Respondent, Gasky Construction Corporation, liable for the violations of the CWA alleged in the First Amended Administrative Complaint ("Amended Complaint") filed in this matter and assessing a civil penalty in the amount of $10,155.00 against the Respondent. Pursuant to the Consolidated Rules and the record in this matter and for the reasons set forth below, the Complainant's Motion for Default is hereby **GRANTED**.

BACKGROUND

The Complainant filed the original Administrative Complaint ("Complaint") against Respondent in this matter on September 21, 2004. Section IV of the Complaint, entitled "Failure to File an Answer," provides information concerning Respondent's obligations with respect to responding to the Complaint. Paragraph 25 of Section IV of the Complaint specifically states that:

> If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, RESPONDENT MUST FILE AN ANSWER TO THIS COMPLAINT WITHIN THIRTY (30) DAYS AFTER SERVICE OF THIS COMPLAINT . . . .

(Emphasis in original).

Paragraph 26 of Section IV of the Complaint advises that:

> Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion . . . .

Paragraph 27 of Section IV of the Complaint warns that:

> IF RESPONDENT DOES NOT FILE AN ANSWER TO THIS COMPLAINT WITHIN THIRTY (30) DAYS AFTER SERVICE OF THIS COMPLAINT, AD DEFAULT ORDER MAY BE ISSUED AGAINST RESPONDENT PURSUANT TO 40 C.F.R. § 22.17.

(Emphasis in original).

The Certificate of Service attached to the Complaint includes a certification that a copy of the Complaint was sent by certified mail, return receipt requested on September 21, 2004, addressed to Mr. Bill Gasky, identified in the Certificate of Service as Respondent's President. A certified mail return receipt (green card) filed with the Regional Hearing Clerk shows that an

article bearing the receipt number reflected on Complainant's cover letter transmitting the Complaint to Respondent was received at the address indicated in the Certificate of Service on September 24, 2004. A properly executed return receipt constitutes proof of service of the Complaint. Nothing in the return receipt in this case suggests that it was not properly executed, thus proper service of the Complaint may be presumed under the Consolidated Rules.

On October 28, 2004, Complainant filed a Status Report with the Regional Hearing Clerk which reported that Complainant believed Respondent had agreed to a settlement in principle and that a proposed consent agreement and final order ("CAFO") had been drafted and sent to Respondent for execution on October 18, 2004. Complainant stated that on October 20, 2004, Complainant received a letter from the Respondent stating that the Complaint is unwarranted and without merit. Finally, Complainant indicated that if Respondent would execute the CAFO and returned it to Complainant by November 30, 2004, Complainant anticipated that the CAFO would be signed by appropriate EPA officials and filed with the Regional Hearing Clerk. The Certificate of Service attached to the Status Report indicates that a copy of the Status Report was served on Respondent on October 28, 2004.

In a Notice of Assignment and Initial Scheduling Order ("Initial Scheduling Order") filed and served on the parties on November 19, 2004, the Presiding Officer found that the Respondent's letter to Complainant referred to in Complainant's Status Report was received by Complainant prior to the original due date for Respondent's answer and that Respondent's letter made statements about the circumstances of the alleged violations and stated that the Complaint is unwarranted and without merit. The Presiding Officer also found that Respondent had not filed the letter with the Regional Hearing Clerk and that the letter did not appear to meet the

requirements for an answer set out in 40 C.F.R. § 22.15(b). Finally, the Presiding Officer stated, "It is not clear if the Respondent is under the mistaken impression that its letter satisfies the requirement that Respondent file an answer to the Complaint." The Presiding Officer ordered as follows:

1. Upon its own initiative pursuant to 40 C.F.R. § 22.7(b), the Presiding Officer is extending the time for the Respondent to file its answer to the Complaint in this matter until **December 20, 2004**. On or before December 20, 2004, the Respondent shall file its answer to the Complaint consistent with the requirements of 40 C.F.R. § 22.15. Failure to file an answer or to obtain a further extension of time on or before December 20, 2004, may result in Respondent being found in default pursuant to 40 C.F.R. § 22.17.

2. On or before **December 6, 2004**, the parties shall file a report on the status of settlement negotiations in this matter (without disclosing the substance of settlement negotiations), including, at a minimum, the status of the draft CAFO referred to in Complainant's Status Report filed October 28, 2004, a summary of other contacts between the parties regarding this case, an assessment of whether settlement of this matter continues to be likely or if negotiations have reached an impasse, a statement of whether a settlement in principle has been reached, and, if applicable, a projected date for the filing of a CAFO. **If the parties cannot agree on a joint status report, they shall file separate reports**.

3. The parties shall continue to file reports on the status of settlement negotiations as described in paragraph 2 above **each month on or before the 5th day of the month** until otherwise ordered.

(emphasis in original).

In a Joint Status Report signed by both parties and filed on December 3, 2004, the parties reported, among other things, that they had engaged in two telephone conferences since the Initial Scheduling Order; that the parties had not reached a settlement in principle; that settlement did not appear imminent; and that Respondent would file its answer to the Complaint and request for a hearing consistent with 40 C.F.R. § 22.15 on or before December 20, 2004. The certificate of

service attached to the Joint Status Report indicates that a copy of the Joint Status Report was served on Respondent on December 3, 2004.

In a Status Report filed on January 4, 2005, Complainant reported that as of January 3, 2005, Respondent had not filed an answer to the Complaint; that Complainant had received no communication from Respondent since the filing of the Joint Status Report on December 3, 2004; that Counsel for Complaint had made attempts to contact Respondent's representative by telephone and left messages which had not been returned; that Complainant believed settlement of this matter was no longer imminent and that negotiations had reached an impasse; and that Complainant anticipated filing a motion for default unless Respondent made good faith efforts to settle this matter upon receipt of a copy of Complainant's Status Report. The certificate of service attached to the Status Report indicates that a copy was served on Respondent on January 4, 2005.

The Complainant filed the First Amended Administrative Complaint ("Amended Complaint") March 1, 2005. Section V of the Amended Complaint, entitled "Failure to File an Answer," provides information concerning Respondent's obligations with respect to responding to the Amended Complaint. Paragraph 24 of Section V of the Amended Complaint specifically states that:

> If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, RESPONDENT MUST FILE AN ANSWER TO THIS FIRST AMENDED COMPLAINT WITHIN TWENTY (20) DAYS AFTER SERVICE OF THIS FIRST AMENDED COMPLAINT . . . .

(Emphasis in original).

Paragraph 25 of Section V of the Amended Complaint advises that:

> Failure to file an Answer to this First Amended Complaint within twenty (20) days of service of the First Amended Complaint shall constitute an admission of all facts alleged in the First Amended Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the First Amended Complaint will constitute an admission as to that finding or conclusion . . . .

Paragraph 26 of Section V of the Amended Complaint warns that:

> IF RESPONDENT DOES NOT FILE AN ANSWER TO THIS FIRST AMENDED COMPLAINT WITHIN TWENTY (20) DAYS AFTER SERVICE OF THIS FIRST AMENDED COMPLAINT, A DEFAULT ORDER MAY BE ISSUED AGAINST RESPONDENT PURSUANT TO 40 C.F.R. § 22.17.

(Emphasis in original).

The Certificate of Service attached to the Amended Complaint includes a certification that a copy of the Amended Complaint was sent by certified mail, return receipt requested on March 1, 2005, addressed to Mr. Bill Gaskey, identified in the Certificate of Service as Respondent's President. A certified mail return receipt (green card) filed with the Regional Hearing Clerk, a copy of which is attached to Complainant's Motion for Default, shows that an article was received at the address indicated in the Certificate of Service on April 4, 2005. The green card bears the docket number of this case and the word "Complaint" is printed at the top of the green card. A properly executed return receipt constitutes proof of service of the Amended Complaint. Nothing in the return receipt in this case suggests that it was not properly executed., thus proper service of the Amended Complaint may be presumed under the Consolidated Rules.[1]

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[1]It is noted that Complainant also asserts that the Amended Complaint was served on Respondent by FedEx. Complainant attached a copy of FedEx Tracking Results (Attachment C) showing that a package was delivered to Houston, Texas on April 6, 2005. After reviewing the document, I was not able to find any way to connect the FedEx Tracking Results with the Amended Complaint nor was I able to determine the address to which the package was delivered with any more specificity than "Houston, TX." Therefore, I did not consider the FedEx Tracking Results sufficient evidence to establish service of the Amended Complaint

In a Status Report filed on April 13, 2005, Complainant reported, among other things, that Complainant had experienced some difficulties in effectuating service of the Amended Complaint on Respondent; that Complainant had resent the Amended Complaint by both FedEx and certified mail; that Complainant had received no communications from Respondent since the filing of the Joint Status Report on December 3, 2004; and that Complainant anticipated filing a motion for default after the deadline for Respondent's answer to the Amended Complaint passed. The certificate of service attached to the Status Report indicates that the Status Report was served on Respondent on April 13, 2005.

On July 1, 2005, Complainant filed its Motion for Default. The Certificate of Service attached to the Motion for Default shows that a copy of the Motion for Default was served on the Respondent by certified mail, return receipt requested, on July 1, 2005.

As of the date of this order, the Respondent has not filed an answer to the Complaint or the Amended Complaint or a response to the Motion for Default with the Regional Hearing Clerk.

FINDINGS OF FACT

Pursuant to sections 22.17(c) and 22.27(a) of the Consolidated Rules, 40 C.F.R. §§ 22.17(c) and 22.27(a), and based on the entire record in this case, I make the following findings of fact:

1. Respondent Gaskey Construction Corporation is a corporation which was incorporated under the laws of the State of Texas.

2. At all relevant times, Respondent owned or operated the Chase Bank construction project located at 10611 Broadway (FM 518), Pearland, Brazoria County, Texas 77584 ("the Facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the Facility was a "point source" of a "discharge" of "pollutants" with its storm water discharges to the receiving waters of Clear Lake, which are "waters of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that is a point source of discharges of pollutants to waters of the United States, Respondent and the Facility were subject to the CWA and the National Pollution Discharge Elimination System ("NPDES") program.

5. Under section 301 of the CWA, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities subject to "storm water discharges associated with industrial activity" are "point sources" subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

7. Under 40 C.F.R. § 122.26(b), the following category of facilities is among those considered to be engaging in "industrial activity" for purposes of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26:

> . . . (x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five [5] acres of total land area which are not part of a larger common plan of development or sale.

8. Phase II of the Storm Water Regulations was signed October 29, 1999, published December 8, 1999, became effective February 7, 2000, and required compliance for Phase 2 Construction Activities by March 10, 2003 (*See* 64 *Fed. Reg.* 68722 - 68851). Construction sites are automatically designated and require nationwide coverage for "construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres," or "construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres." 40 C.F.R. § 122.26(b)(15).

9. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or an authorized State, may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

10. Pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a), EPA issued the General Permit for Storm Water Discharges Associated with Industrial Activity ("the General Permit"). The General Permit authorized "storm water discharges associated with industrial activity" to "waters of the United States" (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the General Permit. The Texas Commission on Environmental Quality ("TCEQ") assumed the NPDES program on September 14, 1998 (63 Fed. Reg. 51164), and is the permitting authority for most of Texas.

Pursuant to Section 26.040 of the Texas Water Code and Section 402(p) of the CWA, 33 U.S.C. § 1342(p), TCEQ issued Texas Pollutant Discharge Elimination System ("TPDES") General Permit coverage for Storm Water Discharges from Construction Sites, which became effective March 5, 2003 (TPDES No. TXR150000).

11. At all relevant times, Respondent was involved in construction activities including clearing, grading, and excavation disturbing one (1) to five (5) acres of total land area as part of the small construction activities that require development and implementation of a storm water pollution prevention plan ("SWPPP"), posting of construction site notice, and adherence to the terms and conditions of the TPDES Storm Water Construction General Permit ("SWCGP").

12. At all relevant times, the Facility was a "point source" as that term is defined at Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

13. At all relevant times, Respondent was an "owner" or "operator" of a facility engaged in industrial activity that was a point source subject to discharges of pollutants to waters of the United States within the meaning of 40 C.F.R. Part 122 and the General Permit, and Respondent was, therefore, required to obtain TPDES permit coverage at the effective date of the applicable permit and regulations, or upon commencing the subject activities thereafter.

14. Respondent began the relevant activities defined as industrial activity on or about June 2003, which continued throughout the time period relevant to this action, and was required to comply with the TPDES permit in March 2003.

15. On October 15, 2003, the Facility was inspected by EPA Storm Water Inspectors, and the Inspection Report was received in the Enforcement Division January 5, 2004. As a result of the inspection, the following findings were made and violations identified:

A. The Respondent failed to obtain TPDES permit coverage for its storm water discharges and was not authorized to discharge pollutants to waters of the United States, in violation of Section 301 of the CWA.

B. The Respondent failed to develop and implement a SWPPP, post a construction site notice, and comply with the terms and conditions of the TPDES SWCGP.

16. On March 31, 2004, EPA issued Respondent Administrative Order Docket Number CWA-06-2004-2020 under the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a). That Administrative Order required the Respondent to come into compliance with its applicable permit, to provide an informational response on TPDES storm water construction compliance, and to meet with EPA in a Show Cause meeting.

17. A Show Cause teleconference was held on April 7, 2004, to discuss the above violations and a penalty settlement.

18. Each day that Respondent engaged in the construction activities and operated the Facility without a TPDES permit as described above is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

19. Under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed $11,000 per day for each day during which violation continues, up to a maximum of $27,500.

20. EPA notified TCEQ of the issuance of the Complaint and afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

21. EPA notified the public of the filing of the Complaint and afforded the public thirty (30) days to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA had received no comments from the public.

22. The Complaint was filed with the Regional Hearing Clerk on September 21, 2004.

23. A copy of the Complaint was mailed to Respondent by certified mail, return receipt requested, on September 21, 2004.

24. A return receipt shows that Respondent received a copy of the Complaint on September 24, 2004.

25. By the Initial Scheduling Order filed on November 19, 2004, the Presiding Officer, on his own initiative, extended the due date for Respondent's answer to the Complaint to December 20, 2004.

26. Respondent did not file an answer to the Complaint within 30 days of receipt of the Complaint or on or before December 20, 2004, as required by the Initial Scheduling Order, and has not filed an answer as of the date of this Order.

27. The Amended Complaint was filed with the Regional Hearing Clerk on March 1, 2005.

28. A copy of the Amended Complaint was mailed to Respondent by certified mail, return receipt requested, on March 1, 2005.

29. A return receipt shows that Respondent received a copy of the Amended Complaint on April 4, 2005.

30. Respondent did not file an answer to the Amended Complaint within 20 days of receipt and has not filed an answer as of the date of this Order.

31. On July 1, 2005, Complainant filed its Motion for Default and served it on the Respondent.

32. Respondent did not file an response to Complainant's Motion for Default within 15 days of service and has not filed a response to the Motion for Default as of the date of this Order.

CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a), and based on the entire record, I reach the following conclusions of law:

33. Respondent is a "person" as defined at section 502(2) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

34. Respondent violated section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants to waters of the United States without a permit.

35. Pursuant to section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for civil penalties not to exceed $11,000 per violation up to a maximum of $27,500.

36. The Complaint in this proceeding was lawfully and properly served upon Respondent in accordance with 40 C.F.R. § 22.5(b)(1).

37. Respondent's failure to file an answer to the Complaint constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. 40 C.F.R. § 22.17(a).

38. The Amended Complaint in this proceeding was lawfully and properly served upon Respondent in accordance with 40 C.F.R. § 22.5(b)(1).

39. Respondent was required to file an answer to the Amended Complaint within 20 days of the service of the Amended Complaint. 40 C.F.R. § 22.15(a).

40. Respondent's failure to file an answer to the Amended Complaint constitutes an admission of all facts alleged in the Amended Complaint and a waiver of Respondent's right to a hearing on such factual allegations. 40 C.F.R. § 22.17(a).

41. Complainant's Motion for Default was lawfully and properly served on Respondent. 40 C.F.R. § 22.5(b)(2).

42. Respondent was required to file any response to the Motion for Default within 15 days of service. 40 C.F.R. § 22.16(b).

43. Respondent's failure to respond to the Motion for Default is deemed to be a waiver of any objection to the granting of the Motion for Default. 40 C.F.R. § 22.16(b).

44. The civil penalty of $10,155.00 requested in the Motion for Default is not inconsistent with section 309(g) of the CWA, 33 U.S.C. § 1319, and the record in this proceeding.

DISCUSSION OF PENALTY

The relief requested in the Motion for Default includes the assessment of a total civil penalty of $10,155.00 for the alleged violation. With respect to penalty, the Consolidated Rules provide that the Presiding Officer shall determine the amount of the civil penalty

> . . . based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act.

40 C.F.R. § 22.27(b).

The statutory factors I am required to consider in determining the amount of the civil penalty are

> . . . the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

In considering this case in light of the statutory factors, I have considered the findings of fact and conclusions of law above, the narrative summary explaining the reasoning behind the penalty requested set forth in the Declaration of Everett H. Spencer attached to Complainant's Motion for Default, and the entire record in this case. The nature of the violation in this case is a failure on the part of the Respondent to obtain a necessary permit. The extent of Respondent's failure was total; Respondent made no effort to obtain the permit, and its failure continued even after EPA made Respondent aware of the requirement. The gravity of the violation was very significant because the requirement to obtain the permit and operate within its requirements is essential to the regulatory scheme designed to protect water quality. In addition to the foregoing

circumstances, I also considered that there is no evidence in the record that actual environmental harm resulted from Respondent's violation. I consider Respondent to have a high level of culpability in this case, especially since Respondent failed to cure the violation after EPA made Respondent aware of it. Respondent apparently has no history of violations. The economic benefit in this case was not significant. Nothing in the record suggests that Respondent lacks the ability to pay the penalty proposed. I find no basis for Mr. Spencer's considering that this case involves five violations because Respondent operated without the required permit for five months. While Mr. Spencer did not make any adjustments in his penalty calculation for other factors as justice may require, I did consider Respondent's general recalcitrance in its dealings with EPA concerning the violation under this factor.

Pursuant to 40 C.F.R. § 22.17(c), "[t]he relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." The Complainant proposes to assess a total civil penalty of $10,155.00 for the violation alleged in the Amended Complaint. After considering the statutory factors, and the entire record in this case, I find the civil penalty proposed is consistent with the record of this proceeding and the CWA.

DEFAULT ORDER

Respondent is hereby **ORDERED** as follows:

(1) Respondent is assessed a civil penalty in the amount of $10,155.00.

(a) Payment of the full amount of the civil penalty assessed shall be made within thirty (30) days after this default order becomes final under 40 C.F.R. § 22.27(c) by submitting a certified check or cashier's check

payable to "Treasurer, United States of America," and mailed to:

Regional Hearing Clerk
EPA Region 6
P.O. Box 360582M
Pittsburgh, PA 15251

A transmittal letter identifying the subject case and the EPA docket number, plus Respondent's name and address, shall accompany the check.

(b) Respondent shall mail a copy of the check to:

Lorena S. Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

and to:

Chief, Water Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Yerusha Beaver
Assistant Regional Counsel (6RC-EW)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

(2) This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. § 22.17(c). This Initial Decision shall become a final order unless (1) an appeal to the Environmental Appeals Board is taken from it by any party to the proceeding within thirty (30) days from the date of service provided in the certificate of service accompanying this order; (2) a party moves to set aside the Default Order,

or (3) the Environmental Appeals Board elects, *sua sponte*, to review the Initial Decision within forty-five (45) days after its service upon the parties.

IT IS SO ORDERED.

Dated this 6th day of February 2006.

MICHAEL C. BARRA
REGIONAL JUDICIAL OFFICER

CERTIFICATE OF SERVICE

I, Lorena S. Vaughn, the Regional Hearing Clerk for the Region 6 offices of the Environmental Protection Agency, hereby certify that a TRUE AND CORRECT copy of the Initial Decision and Default Order in Docket No. CWA 06-2004-2335, was served upon the parties on the date and in the manner set forth below:

Eurika Durr
U.S. Environental Protection Agency
Clerk of the Board
Environmental Appeals Board (MC1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

U.S. FIRST CLASS MAIL - RETURN RECEIPT REQUESTED

Bill Gaskey
President
Gaskey Construction Corporation
11422 Craighead Drive
Houston, Texas 77025

Yerusha Beaver
Office of Regional Counsel
Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

INTEROFFICE-MAIL

DATE: 2-6-06

Lorena S. Vaughn
Regional Hearing Clerk