

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0936-LII TCEQ ID: RN103450953 CASE NO.: 33907
RESPONDENT NAME: JAVIER R. MARTINEZ

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 21123 Garden Arbor Lane, Richmond, Fort Bend County</p> <p>TYPE OF OPERATION: Landscape irrigation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint has been received, alleging that the Respondent installed an irrigation system without being properly licensed. There are no other pending enforcement actions regarding this location.</p> <p>INTERESTED PARTIES: The complainant has not expressed a desire to speak or protest. No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 11, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825 TCEQ Regional Contact: Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581 Respondent: Mr. Javier R. Martinez, 4646 Highway 6, Ste. 215, Sugarland, Texas 77478-5214 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: February 27, 2007</p> <p>Date of Record Review Relating to this Case: May 25, 2007</p> <p>Date of NOE Relating to this Case: June 1, 2007</p> <p>Background Facts: The EDPRP was filed on December 7, 2007, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP. The Respondent failed to respond to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: As of October 9, 2008, the Respondent is not a licensed irrigator.</p> <p>LII:</p> <p>Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required [30 TEX. ADMIN. CODE §§ 344.4(a) and 30.5(a), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251].</p>	<p>Total Assessed: \$625</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$625</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this order.</p> <p>Site Compliance History Classification N/A</p> <p>Person Compliance History Classification N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease advertising, selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed. 2. Within 15 days, submit written certification to demonstrate compliance with this Ordering Provision.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 15, 2006

TCEQ

DATES	Assigned	4-Jun-2007		
	PCW	16-Oct-2007	Screening	19-Jun-2007
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Javier R. Martinez
Reg. Ent. Ref. No.	RN103450953
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33907	No. of Violations	1
Docket No.	2007-0936-LII-E	Order Type	1660
Media Program(s)	All Occupational Licenses	Enf. Coordinator	Judy Kluge
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$625**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement *Subtotals 2, 3, & 7* **\$0**

Notes: No adjustment for compliance history.

Culpability No 0% Enhancement *Subtotal 4* **\$0**

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The respondent does not meet the good faith criteria.

0% Enhancement *Subtotal 6* **\$0**

Total EB Amounts	\$15	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$450	

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$625**

OTHER FACTORS AS JUSTICE MAY REQUIRE *Adjustment* **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$625**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$625**

DEFERRAL 0% Reduction *Adjustment* **\$0**

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.

PAYABLE PENALTY **\$625**

Screening Date 19-Jun-2007

Docket No. 2007-0936-LII-E

PCW

Respondent Javier R. Martinez

Policy Revision 2 (September 2002)

Case ID No. 33907

PCW Revision November 15, 2006

Reg. Ent. Reference No. RN103450953

Media [Statute] All Occupational Licenses

Ent. Coordinator Judy Kluge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
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)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

Screening Date 19-Jun-2007

Docket No. 2007-0936-LII-E

PCW

Respondent Javier R. Martinez

Policy Revision 2 (September 2002)

Case ID No. 33907

PCW Revision November 15, 2006

Reg. Ent. Reference No. RN103450953

Media [Statute] All Occupational Licenses

Enf. Coordinator Judy Kluge

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 344.4(a) and 30.5(a), Tex. Water Code § 37.003, and Tex. Occupations Code § 1903.251

Violation Description

Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Martinez installed a landscape irrigation system at 21123 Garden Arbor Lane in Richmond, Fort Bend County, Texas, without holding an irrigator license, as documented during a record review conducted on May 25, 2007.

Base Penalty

>> Environmental Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would 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

mark only one with an x

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

Violation Base Penalty

One single event is recommended for one irrigation system installation.

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: Javier R. Martinez
 Case ID No: 33907
 Reg. Ent. Reference No: RN103450953
 Media: All Occupational Licenses
 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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	\$0	\$0
Record Keeping System				0.0	\$0	\$0	\$0
Training/Sampling				0.0	\$0	\$0	\$0
Remediation/Disposal				0.0	\$0	\$0	\$0
Permit Costs	\$450	25-May-2007	31-Jan-2008	0.7	\$15	\$0	\$15
Other (as needed)				0.0	\$0	\$0	\$0

Notes for DELAYED costs

Estimated cost to obtain a irrigator license. 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance (2)				0.0	\$0	\$0	\$0
ONE-TIME avoided costs (3)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$450

TOTAL:

\$15

Compliance History

Customer/Respondent/Owner-Operator:	CN601970916 MARTINEZ, JAVIER R	Classification:	Rating:
Regulated Entity:	RN103450953 MARTINEZ, JAVIER R	Classification:	Site Rating:
ID Number(s):	_____		
Location:	4646 HIGHWAY 6, STE 215, SUGARLAND, TX		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	July 09, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 09, 2002 to July 09, 2007		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Chris Holcomb Phone: (512) 239-2541

Site Compliance History Components

- | | |
|--|-----|
| 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 of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
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.)
 - 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
JAVIER R. MARTINEZ;
RN103450953**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2007-0936-LII-E**

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, 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 Javier R. Martinez ("Mr. Martinez").

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

FINDINGS OF FACT

1. Mr. Martinez owns and operates a landscape irrigation business located at 4646 Highway 6, Ste. 215, Sugarland, Fort Bend County, Texas (the "Business").
2. Mr. Martinez sells, designs, consults, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Martinez is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903, TEX. WATER CODE ch. 37, and 30 TEX. ADMIN. CODE chs. 30 and 344.
3. During a record review conducted on May 25, 2007, a TCEQ Central Office investigator documented that Mr. Martinez failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Martinez installed a landscape irrigation system at 21123 Garden Arbor Lane, Richmond, Fort Bend County, Texas, without holding an irrigator license.

4. Mr. Martinez received notice of the violation on or about June 6, 2007.
5. 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 Javier R. Martinez" (the "EDPRP") in the TCEQ Chief Clerk's office on December 7, 2007.
6. By letter dated December 7, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Martinez with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Martinez received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Martinez received notice of the EDPRP, provided by the Executive Director. Mr. Martinez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Martinez is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Martinez failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Martinez installed a landscape irrigation system at 21123 Garden Arbor Lane, Richomd, Fort Bend County, Texas, without holding an irrigator license in violation of 30 TEX. ADMIN. CODE §§ 344.4(a) and 30.5(a), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Martinez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Mr. Martinez failed to file a timely answer to the EDPRP, 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 Mr. Martinez 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 Mr. Martinez for violations of the Texas Water Code within the Commission'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 six hundred twenty-five dollars (\$625.00) 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. Mr. Martinez is assessed an administrative penalty in the amount of six hundred twenty-five dollars (\$625.00) for violations of the Texas Water Code, Texas Occupations Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Martinez'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. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Javier R. Martinez; Docket No. 2007-0936-LII-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Martinez shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Martinez shall cease selling, designing, consulting, installing, maintaining, altering, repairing, advertising, or

servicing landscape irrigation systems until properly licensed in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 344; and

- b. Within 15 days after the effective date of this Order, Mr. Martinez shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a.. The certification shall be notarized by a State of Texas Notary Public and 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.”

Mr. Martinez shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. to:

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

with a copy to:

Robert Mann, Manager, Regulatory Compliance Section, MC 178
Texas Commission on Environmental Quality
Compliance Support Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Martinez. Mr. Martinez is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.

5. If Mr. Martinez 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, Mr. Martinez's failure to comply is not a violation of this Order. Mr. Martinez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Martinez shall notify the Executive Director within seven days after Mr. Martinez becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Mr. Martinez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Martinez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Mr. Martinez if the Executive Director determines that Mr. Martinez has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RUDY CALDERON

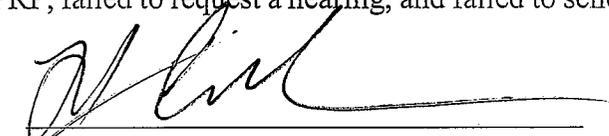
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Rudy Calderon. 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 Javier R. Martinez” (the “EDPRP”) was filed with the Office of the Chief Clerk on December 7, 2007.

The EDPRP was mailed to Mr. Martinez at its his last known address on December 7, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Martinez received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

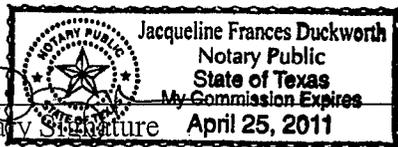
More than 20 days have elapsed since Mr. Martinez received notice of the EDPRP. Mr. Martinez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Rudy Calderon, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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.

Given under my hand and seal of office this 9th day of October, A.D., 2008.


Notary Signature _____
Jacqueline Frances Duckworth
Notary Public
State of Texas
My Commission Expires
April 25, 2011