

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2009-0395-LII-E TCEQ ID: RN105639348 CASE NO.: 37332
RESPONDENT NAME: MARDONIO FLORES DBA FLORES LANDSCAPING**

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 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

SITE WHERE VIOLATION(S) OCCURRED: 7507 Compass Drive, Austin, Travis County

TYPE OF OPERATION: Landscaping business which provides landscape irrigation installation services

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that Flores Landscaping advertised "Sprinkler Systems" in the August 28-September 3, 2008, Austin/Central Texas Greensheet and did not include an irrigator license number. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or to speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 12, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator: Mr. Keith Frank, Enforcement Section, MC 128, (512) 239-1203
- TCEQ Regional Contact: Ms. Sandi Mota, Landscape Irrigation Program, MC 178, (512) 239-1452
- Respondent: Mr. Mardonio Flores, Owner, Flores Landscaping, 7507 Compass Drive, Austin, Texas 78724
- Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" 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: September 9, 2008</p> <p>Date of Investigation Relating to this Case: February 2, 2009</p> <p>Date of NOE Relating to this Case: March 1, 2009</p> <p>Background Facts: The EDRP was filed July 20, 2009, 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 EDRP. The Respondent failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>LII: Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration [TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30].</p>	<p>Total Assessed: \$525</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$525</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 Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease advertising irrigation system services until properly licensed. 2. Within 15 days, submit written certification to demonstrate compliance with Ordering Provision No. 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-Mar-2009	Screening	19-Mar-2009	EPA Due	
	PCW	25-Jun-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Mardonio Flores dba Flores Landscaping
Reg. Ent. Ref. No.	RN105639348
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37332	No. of Violations	1
Docket No.	2009-0395-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Keith Frank
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$5	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$111	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 19-Mar-2009

Docket No. 2009-0395-LII-E

PCW

Respondent Mardonio Flores dba Flores Landscaping

Policy Revision 2 (September 2002)

Case ID No. 37332

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105639348

Media [Statute] Irrigators

Enf. Coordinator Keith Frank

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)	1	5%
	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 judgements 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) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has received one NOV for same or similar violations.

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

Screening Date 19-Mar-2009	Docket No. 2009-0395-LII-E	PCW			
Respondent Mardonio Flores dba Flores Landscaping	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 37332	<small>PCW Revision October 30, 2008</small>				
Reg. Ent. Reference No. RN105639348					
Media [Statute] Irrigators					
Enf. Coordinator Keith Frank					
Violation Number <input type="text" value="1"/>					
Rule Cite(s)	30 Tex. Admin. Code §§ 30.5(b) and 344.30, Tex. Water Code § 37.003, and Tex. Occupations Code § 1903.251				
Violation Description	Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration, as documented during a record review conducted on February 2, 2009. Specifically, the Respondent advertised sprinkler system work via the website austin.craigslist.org and via the Austin/Central Texas Greensheet without having an irrigator license.				
Base Penalty		<input type="text" value="\$2,500"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
		Percent	<input type="text" value="0%"/>		
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>		
Matrix Notes	100% of the rule requirement not met.				
Adjustment		<input type="text" value="\$2,250"/>			
		<input type="text" value="\$250"/>			
Violation Events					
Number of Violation Events		<input type="text" value="2"/>	Number of violation days		
		<input type="text" value="45"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text" value="x"/>			
		Violation Base Penalty	<input type="text" value="\$500"/>		
Two single events are recommended based on documentation of the violation during a record review conducted on February 2, 2009.					
Good Faith Efforts to Comply		<input type="text" value="0.0%"/>	Reduction	<input type="text" value="\$0"/>	
		Before NOV	NOV to EDRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	x	<small>(mark with x)</small>			
Notes	The Respondent does not meet the good faith criteria for this violation.				
Violation Subtotal		<input type="text" value="\$500"/>			
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$5"/>	Violation Final Penalty Total		<input type="text" value="\$525"/>
		This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$525"/>	

Economic Benefit Worksheet

Respondent Mardonio Flores dba Flores Landscaping
Case ID No. 37332
Reg. Ent. Reference No. RN105639348
Media Irrigators
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
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$111	2-Feb-2009	26-Nov-2009	0.81	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to obtain an irrigator license. 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				0.00	\$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

\$111

TOTAL

\$5

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603417718	Flores Landscaping	Classification:	Rating:
Regulated Entity:	RN105639348	FLORES LANDSCAPING	Classification:	Site Rating:
Location:	7507 COMPASS DRIVE, AUSTIN, TX, 78724			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 17, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 17, 2004 to March 17, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Keith Frank	Phone:	239 - 1203	

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.)

10/24/2008 (706195)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 344, SubChapter F 344.93(b)

Description: Failure to include in all advertisements, including business cards the irrigator license number in the form of "LI _____." Specifically, during the 10/22/08 record review investigation, it was documented that Flores Landscaping, Landscape Irrigator License No. NONE, was advertising "irrigation services" without holding a valid landscape irrigator's license, as evidenced by a copy of an advertisement for Flores Landscaping at the website of austin.craigslist.org. The advertisement did not include a license number.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 30, SubChapter A 30.5(b)

Description: A person may not advertise or represent themselves to the public as a holder of a license or registration unless they possess a current license or registration. A person may not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current license or registration, or unless it employs individuals who hold current licenses.

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
MARDONIO FLORES DBA
FLORES LANDSCAPING;
RN105639348

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2009-0395-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 to 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 Mardonio Flores dba Flores Landscaping ("Mr. Flores").

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

FINDINGS OF FACT

1. Mr. Flores owns and operates a landscaping business, which provides landscape irrigation installation services, located at 7507 Compass Drive, Austin, Travis County, Texas (the "Business").
2. Mr. Flores sells, designs, consults, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Flores is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903, TEX. WATER CODE ch. 37, and the rules of the Commission.
3. During a record review conducted on February 2, 2009, a TCEQ Central Office regulatory compliance investigator documented that Mr. Flores failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration. Specifically, the Respondent advertised sprinkler system work via the website "austin.craigslist.org" and via the "Austin/Central Texas Greensheet" without having an irrigator license.
4. Mr. Flores received notice of the violation on or about March 6, 2009.

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 Mardonio Flores dba Flores Landscaping" (the "EDPRP") in the TCEQ Chief Clerk's office on July 20, 2009.
6. By letter dated July 20, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Flores 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. Flores received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Flores received notice of the EDPRP, provided by the Executive Director. Mr. Flores 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. Flores 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. Flores failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration, in violation of TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Flores 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. Flores 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 Mr. Flores 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. Flores 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 five hundred twenty-five dollars (\$525.00) 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. Flores is assessed an administrative penalty in the amount of five hundred twenty-five dollars (\$525.00) for violations of the Texas Water Code, the Texas Occupations Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Flores'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: Mardonio Flores dba Flores Landscaping; Docket No. 2009-0395-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. Flores shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Flores shall cease advertising irrigation system services until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 30; and
 - b. Within 15 days after the effective date of this Order, Mr. Flores 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. Flores shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a.:

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

with a copy to:

Sandi Mota, Landscape Irrigation Program
Texas Commission on Environmental Quality, MC 178
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. Flores. Mr. Flores 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. Flores 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. Flores's failure to comply is not a violation of this Order. Mr. Flores shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Flores shall notify the Executive Director within seven days after Mr. Flores 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. Flores shall be made in writing to the Executive Director. Extensions are not effective until Mr. Flores 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. Flores if the Executive Director determines that Mr. Flores 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 this Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Mardonio Flores dba Flores Landscaping
Docket No. 2009-0395-LII-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

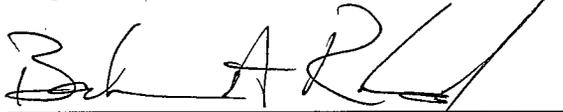
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Barham A. Richard. 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 Mardonio Flores dba Flores Landscaping” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 20, 2009.

The EDPRP was mailed to Mr. Flores at his last known address on July 20, 2009, 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. Flores received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

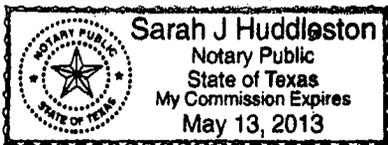
More than 20 days have elapsed since Mr. Flores received notice of the EDPRP. Mr. Flores failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, 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 21st day of August, A.D., 2009.



Notary Signature