

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0849-LII-E TCEQ ID RN105619886 CASE NO. 37748
RESPONDENT NAME: ERASMO ARANDA

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: 2880 Peavy Road, Dallas, Dallas County

TYPE OF OPERATION: landscaping business

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received alleging that the Respondent advertised "irrigation services" on a flier but did not provide a licensed irrigator 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 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 December 7, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
- TCEQ Enforcement Coordinator:** Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563
- TCEQ Regional Contact:** Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901
- Respondent:** Mr. Erasmo Aranda, P.O. Box 515898, Dallas, Texas 75251
- 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 10, 2008</p> <p>Date of Investigation Relating to this Case: February 2, 2009</p> <p>Date of NOE Relating to this Case: February 25, 2009</p> <p>Background Facts: The EDRP was filed on September 16, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDRP on September 18, 2009. The Respondent failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements. The Respondent does not have an irrigator license.</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: \$262</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: \$262</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 demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	1-Jun-2009			
	PCW	2-Sep-2009	Screening	5-Jun-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Erasmio Aranda				
Reg. Ent. Ref. No.	RN105619886				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37748	No. of Violations	1		
Docket No.	2009-0849-LII-E	Order Type	1660		
Media Program(s)	Irrigators	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	John Shelton		
		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	\$37	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$661	

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 5-Jun-2009

Docket No. 2009-0849-LII-E

PCW

Respondent Erasmo Aranda

Policy Revision 2 (September 2002)

Case ID No. 37748

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105619886

Media [Statute] Irrigators

Enf. Coordinator John Shelton

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)

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

Enhancement for one NOV with same or similar violations.

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

Screening Date 5-Jun-2009

Docket No. 2009-0849-LII-E

PCW

Respondent Erasmo Aranda

Policy Revision 2 (September 2002)

Case ID No. 37748

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105619886

Media [Statute] Irrigators

Enf. Coordinator John Shelton

Violation Number 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 irrigation services on a flier without having an irrigator license.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1

123 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended based on documentation of the violation during a record review conducted on February 2, 2009.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$37

Violation Final Penalty Total \$262

This violation Final Assessed Penalty (adjusted for limits) \$262

Economic Benefit Worksheet

Respondent Erasmo Aranda
Case ID No. 37748
Reg. Ent. Reference No. RN105619886
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
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No commas or \$

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	\$661	2-Feb-2009	13-Mar-2010	1.11	\$37	n/a	\$37
Other (as needed)				0.00	\$0	n/a	\$0

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

\$661

TOTAL:

\$37

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603405622 ARANDA, ERASMO	Classification:	Rating:
Regulated Entity:	RN105619886 ARANDA ERASMO	Classification:	Site Rating:
Location:	2880 PEAVY RD, DALLAS, TX, 75228		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	June 05, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 05, 2004 to June 05, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	John Shelton	Phone:	(512) 239-2563

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

Date: 10/02/2008 (702940)
 Self NO Classification: Moderate
 Report?

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 09/29/08 record review investigation, it was documented that Mr. Erasmo Aranda, Landscape Irrigator License Number NONE, Aranda Landscape Company, advertised "ittigation services," as evidenced by a copy of an advertisement for Aranda Landscape Company. The advertisement did not include a landscape irrigator license number.

Self NO Classification: Moderate
 Report?
 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
ERASMO ARANDA;
RN105619886**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2009-0849-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 Erasmo Aranda ("Mr. Aranda").

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

FINDINGS OF FACT

1. Mr. Aranda owns and operates a landscaping business located at 2880 Peavy Road, Dallas, Dallas County, Texas (the "Business").
2. Mr. Aranda sells, designs, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Aranda is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903, TEX. WATER CODE ch. 37, and the rules of the TCEQ.
3. During a record review conducted on February 2, 2009, a TCEQ Central Office investigator documented that Mr. Aranda 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, Mr. Aranda advertised irrigation services on a flier without having an irrigator license.
4. Mr. Aranda received notice of the violation on or about February 29, 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 Erasmio Aranda" (the "EDPRP") in the TCEQ Chief Clerk's office on September 16, 2009.
6. By letter dated September 16, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Aranda with notice of the EDPRP. According to the return receipt "green card," Mr. Aranda received notice of the EDPRP on September 18, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Aranda received notice of the EDPRP, provided by the Executive Director. Mr. Aranda 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. Aranda is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Aranda 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. Aranda with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Aranda 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. Aranda 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. Aranda 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 two hundred sixty-two dollars (\$262.00) 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. Aranda is assessed an administrative penalty in the amount of two hundred sixty-two dollars (\$262.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Aranda'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: Erasmio Aranda; Docket No. 2009-0849-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. Aranda shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Aranda shall cease advertising irrigation system services until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 30;
 - b. Within 15 days after the effective date of this Order, Mr. Aranda 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. Aranda 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:

Mr. Sid Slocum, Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Dr.
Fort Worth, TX 76118-6951

and

Ms. Sandi Mota, Landscape Irrigation Program
Texas Commission on Environmental Quality
P. O. Box 13087, MC 178
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. Aranda. Mr. Aranda 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. Aranda 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. Aranda's failure to comply is not a violation of this Order. Mr. Aranda shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Aranda shall notify the Executive Director within seven days after Mr. Aranda 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. Aranda shall be made in writing to the Executive Director. Extensions are not effective until Mr. Aranda 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. Aranda if the Executive Director determines that Mr. Aranda 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 STEVEN M. FISHBURN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Steven M. Fishburn. 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 Erasmo Aranda” (the “EDPRP”) was filed with the Office of the Chief Clerk on September 16, 2009.

The EDPRP was mailed to Mr. Aranda at his last known address on September 16, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Aranda received notice of the EDPRP on September 18, 2009, as evidenced by the signature on the card.

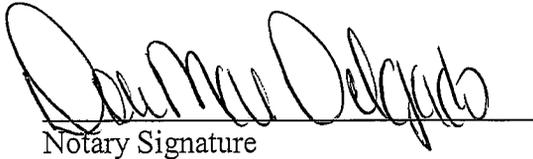
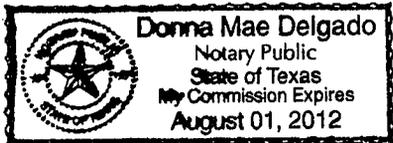
More than 20 days have elapsed since Mr. Aranda received notice of the EDPRP. Mr. Aranda failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 20th day of October, A.D., 2009.



Notary Signature