

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2009-0941-LII-E **TCEQ ID:** RN105731830 **CASE NO.:** 37859  
**RESPONDENT NAME:** Luis Ornelas

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input 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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 9106 Solon Road, Trailer 10, Houston, Harris County and 12710 Aste Lane, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Landscape business</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on March 9, 2009, alleging that the Respondent failed to have an irrigator license prior to working on irrigation systems. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 7, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Ross Fife, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-2541; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Luis Ornelas, 9106 Solon Road, #10, Houston, Texas 77064  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> March 9, 2009</p> <p><b>Date of Investigation Relating to this Case:</b> April 14, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 29, 2009 (NOB)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failure to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system. Specifically, the Respondent installed an irrigation system at the Site without holding a license [30 TEX. ADMIN. CODE §§ 30.5(a) and 344.30(a)(1), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251].</p> <p>2) Failure to ensure the backflow prevention device is tested prior to placing an irrigation system in service. Specifically, the Respondent put the irrigation system in service at the Site without testing the backflow prevention device [30 TEX. ADMIN. CODE § 344.52(c)].</p>	<p><b>Total Assessed:</b> \$1,945</p> <p><b>Total Deferred:</b> \$389  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$156 (remaining \$1,400 due in 14 monthly payments of \$100 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that backflow prevention assembly at the Site was successfully tested on April 15, 2009.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease selling, designing, consulting, installing, maintaining, altering, repairing or servicing landscape irrigation systems until properly licensed, and ensure all local and state regulations are followed including any inspections and permits which must be obtained; and</p> <p>b. Within 15 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): N/A

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision October 30, 2008

<b>ICEQ</b>	<b>DATES</b>	Assigned	8-Jun-2009	Screening	15-Jun-2009	EPA Due	
		PCW	26-Jun-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Luis Ornelas
Reg. Ent. Ref. No.	RN105731830
Facility/Site Region	12-Houston
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37859	No. of Violations	2
Docket No.	2009-0941-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Ross Fife
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

<b>Penalty Calculation Section</b>	
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b> <span style="float: right;">\$1,250</span>
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.</small>	
<b>Compliance History</b>	0.0% Enhancement <b>Subtotal 2, 3, &amp; 7</b> <span style="float: right;">\$0</span>
Notes	No adjustments due to compliance history.
<b>Culpability</b>	No 0.0% Enhancement <b>Subtotal 4</b> <span style="float: right;">\$0</span>
Notes	The Respondent does not meet the culpability criteria.
<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b> <span style="float: right;">\$0</span>
<b>Economic Benefit</b>	0.0% Enhancement* <b>Subtotal 6</b> <span style="float: right;">\$0</span>
Total EB Amounts	\$695
Approx. Cost of Compliance	\$746
<small>*Capped at the Total EB \$ Amount</small>	
<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b> <span style="float: right;">\$1,250</span>
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	55.6% <b>Adjustment</b> <span style="float: right;">\$695</span>
<small>Reduces or enhances the Final Subtotal by the Indicated percentage.</small>	
Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.
	<b>Final Penalty Amount</b> <span style="float: right;">\$1,945</span>
<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b> <span style="float: right;">\$1,945</span>
<b>DEFERRAL</b>	20.0% Reduction <b>Adjustment</b> <span style="float: right;">-\$389</span>
<small>Reduces the Final Assessed Penalty by the Indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
Notes	Deferral offered for expedited settlement.
<b>PAYABLE PENALTY</b>	<span style="float: right;"><b>\$1,556</b></span>

**Screening Date:** 15-Jun-2009

**Docket No.:** 2009-0941-LII-E

**PCW**

**Respondent:** Luis Ornelas

Policy Revision 2 (September 2002)

**Case ID No.:** 37859

PCW Revision October 30, 2008

**Reg. Ent. Reference No.:** RN105731830

**Media [Statute]:** Irrigators

**Enf. Coordinator:** Ross Fife

### 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 <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
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)**

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

No adjustments due to compliance history.

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

**Screening Date:** 15-Jun-2009 **Docket No.:** 2009-0941-LII-E **PCW**  
**Respondent:** Luis Ornelas *Policy Revision 2 (September 2002)*  
**Case ID No.:** 37859 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.:** RN105731830  
**Media [Statute]:** Irrigators  
**Enf. Coordinator:** Ross Fife

**Violation Number:** 1  
**Rule Cite(s):** 30 Tex. Admin. Code §§ 30.5(a) and 344.30(a)(1), 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. Specifically, the Respondent installed an irrigation system at 12710 Astle Lane, Houston, Texas, without holding a license.  
**Base Penalty:** \$2,500

**>> Environmental, Property and Human Health Matrix**

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential	X			25%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					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:** \$1,875  
**Subtotal:** \$625

**Violation Events**

**Number of Violation Events:** 1 **Number of violation days:** 36  
 mark only one with an x  

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

**Violation Base Penalty:** \$625

One single event is recommended.

**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:** \$625

**Economic Benefit (EB) for this violation** **Statutory Limit Test**  
**Estimated EB Amount:** \$695 **Violation Final Penalty Total:** \$973  
**This violation Final Assessed Penalty (adjusted for limits):** \$973

### Economic Benefit Worksheet

**Respondent** Luis Ornelas  
**Case ID No.** 37859  
**Reg. Ent. Reference No.** RN105731830  
**Media** Irrigators  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Item Description:</b> No commas or \$						

**Delayed Costs**

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$661	9-Mar-2009	14-Apr-2009	1.02	\$34	\$661
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain an irrigator license. Date Required is the date the irrigation system was installed and the Final Date is the record review date.

Approx. Cost of Compliance

\$661

**TOTAL**

\$695

<b>Screening Date</b>	15-Jun-2009	<b>Docket No.</b>	2009-0941-LII-E	<b>PCW</b>
<b>Respondent</b>	Luis Ornelas	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	37859	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN105731830			
<b>Media [Statute]</b>	Irrigators			
<b>Enf. Coordinator</b>	Ross Fife			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 344.52(c)			
<b>Violation Description</b>	Failed to ensure backflow prevention device is tested prior to placing an irrigation system in service. Specifically, the Respondent put the irrigation system in service at the Site without testing the backflow prevention device.			
<b>Base Penalty</b>				\$2,500

>> Environmental, Property and Human Health Matrix

<b>OR</b>	<b>Harm</b>			
	Major	Moderate	Minor	
	Actual	Potential		<b>Percent</b>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	25%

>> Programmatic Matrix

	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	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** \$1,875

\$625

Violation Events

Number of Violation Events  Number of violation days

- mark only one with an x
- daily
  - weekly
  - monthly
  - quarterly
  - semiannual
  - annual
  - single event

**Violation Base Penalty** \$625

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer \$0

Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

**Notes**  
The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

**Violation Final Penalty Total** \$973

**This violation Final Assessed Penalty (adjusted for limits)** \$973

## Economic Benefit Worksheet

**Respondent:** Luis Ornelas  
**Case ID No.:** 37859  
**Reg. Ent. Reference No.:** RN105731830  
**Media:** Irrigators  
**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$85	9-Mar-2009	15-Apr-2009	0.10	\$0	\$1	\$1
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to test backflow prevention device. Date Required is the date the irrigation system was installed and the Final Date is the date the backflow prevention test was conducted.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$85

**TOTAL**

\$1

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603481995 ORNELAS, LUIS Classification: Rating:  
Regulated Entity: RN105731830 ORNELAS LUIS Classification: Site Rating:

ID Number(s):

Location: 9106 SOLON RD TRLR 10, HOUSTON, TX, 77064

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 15, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 15, 2004 to June 15, 2009

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

Name: Ross Fife 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/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
- 6.

## 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.)  
N/A
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
LUIS ORNELAS  
RN105731830**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-0941-LII-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Luis Ornelas ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a landscape business at 9106 Solon Road, Trailer 10 in Houston, Harris County, Texas. The Respondent installed an irrigation system at 12710 Aste Lane, Houston, Harris County, Texas ("the Site").
2. TCEQ has general authority to regulate the design and installation of landscape irrigation systems, and the licensing of landscape irrigators and installers, pursuant to TEX. OCCUPATIONS CODE ch. 1903.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 3, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Nine Hundred Forty-Five Dollars (\$1,945) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid One Hundred Fifty-Six Dollars (\$156) of the administrative penalty and Three Hundred Eighty-Nine Dollars (\$389) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of One Thousand Four Hundred Dollars (\$1,400) of the administrative penalty shall be payable in 14 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that backflow prevention assembly at the Site was successfully tested on April 15, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

The Respondent is alleged to have:

1. Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 344.30(a)(1), TEX. WATER CODE § 37.003 and TEX. OCCUPATIONS CODE § 1903.251,

as documented during a record review conducted on April 14, 2009. Specifically, the Respondent installed an irrigation system at the Site without holding a license.

2. Failed to ensure backflow prevention device is tested prior to placing an irrigation system in service, in violation of 30 TEX. ADMIN. CODE § 344.52(c), as documented during a record review conducted on April 14, 2009. Specifically, the Respondent put the irrigation system in service at the Site without testing the backflow prevention device.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Luis Ornelas, Docket No. 2009-0941-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease selling, designing, consulting, installing, maintaining, altering, repairing or servicing landscape irrigation systems until properly licensed, and ensure all local and state regulations are followed including any inspections and permits which must be obtained; and
  - b. Within 15 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or 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 fines and imprisonment for knowing violations."

The certification shall be submitted 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:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

Luis Ornelas

DOCKET NO. 2009-0941-LII-E

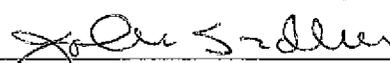
Page 5

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date 11/2/2009

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 9-30-09

Luis ORNELAS  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Luis Ornelas

\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.