

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-0899-LII-E TCEQ ID RN105716542 CASE NO. 37787**  
**RESPONDENT NAME: ANGEL GUZMAN**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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:** 5822 Chinaberry Drive, Houston, Harris County

**TYPE OF OPERATION:** Landscape irrigation business

**SMALL BUSINESS:**  Yes  No  N/A

**OTHER SIGNIFICANT MATTERS:** One complaint was received alleging that Respondent was hired to repair an irrigation system and did not complete the work, and that the license number displayed on Respondent's truck was the license number of another licensed irrigator. 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 January 4, 2010. 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. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492
- TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623
- Respondent:** Mr. Angel Guzman, 5822 Chinaberry Drive, Houston, Texas 77092
- Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></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><b>Date of Complaint Relating to this Case:</b>                      October 3, 2008</p> <p><b>Date of Investigation Relating to this Case:</b>                      October 6, 2008</p> <p><b>Date of NOE Relating to this Case:</b>                      April 17, 2009</p> <p><b>Background Facts:</b>                      The EDPRP was filed on September 22, 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. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                      The Respondent has not yet submitted documentation to certify compliance with the technical requirements. The Respondent does not have an irrigators license.</p> <p><b>LII:</b>                      Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system [TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a)].<sup>1</sup></p>	<p><b>Total Assessed:</b> \$1,360</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$1,360</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><b>Site Compliance History Classification:</b>                      N/A</p> <p><b>Person Compliance History Classification:</b>                      N/A</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>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, cease selling, designing, consulting, installing, maintaining, altering, repairing or servicing landscape irrigation systems until properly licensed.</li> <li>2. Within 15 days, submit written certification demonstrating compliance.</li> </ol>

<sup>1</sup> 30 TEX. ADMIN CODE § 344.4(a) is now found at 30 TEX. ADMIN CODE § 344.30(a), adopted to be effective January 1, 2009, 33 TEX. REG. 5713.



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

## TCEQ

<b>DATES</b>	<b>Assigned</b>	1-Jun-2009		
	<b>PCW</b>	18-Sep-2009	<b>Screening</b>	12-Jun-2009
			<b>EPA Due</b>	

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Angel Guzman		
<b>Reg. Ent. Ref. No.</b>	RN105716542		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	37787	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-0899-LII-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Irrigators	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Michael Meyer
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$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** **Subtotals 2, 3, & 7**

0.0% Enhancement

**Notes**

**Culpability** **Subtotal 4**

0.0% Enhancement

**Notes**

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

**Economic Benefit** **Subtotal 6**

0.0% Enhancement\*

Total EB Amounts	\$735
Approx. Cost of Compliance	\$661

\*Capped at the Total EB \$ Amount

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment**

117.6%

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL** **Adjustment**

0.0%

Reduction

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

**Notes**

**PAYABLE PENALTY**

Screening Date 12-Jun-2009

Docket No. 2009-0899-LII-E

PCW

Respondent Angel Guzman

Policy Revision 2 (September 2002)

Case ID No. 37787

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105716542

Media [Statute] Irrigators

Enf. Coordinator Michael Meyer

**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 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) 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 12-Jun-2009

Docket No. 2009-0899-LII-E

PCW

Respondent Angel Guzman

Policy Revision 2 (September 2002)

Case ID No. 37787

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105716542

Media [Statute] Irrigators

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a) and 344.30(a) [formerly 30 Tex. Admin. Code § 344.4(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, as documented during a record review conducted on October 6, 2008. Specifically, the Respondent repaired an irrigation system at 16022 Drifting Road Circle in Cypress, Harris County, Texas without holding an irrigator license.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				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 1 Number of violation days 1

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 EDRP/Settlement
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 \$735

Violation Final Penalty Total \$1,360

This violation Final Assessed Penalty (adjusted for limits) \$1,360

## Economic Benefit Worksheet

**Respondent:** Angel Guzman  
**Case ID No.:** 37787  
**Reg. Ent. Reference No.:** RN105716542  
**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				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)

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	14-Jun-2007	6-Oct-2008	2.23	\$74	\$661	\$735
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The estimated cost to obtain an irrigator's license. The Date Required is the date the irrigation system was repaired and the final date is the record review date.

Approx. Cost of Compliance

\$661

TOTAL

\$735



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ANGEL GUZMAN  
RN105716542

§  
§  
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§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2009-0899-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 Angel Guzman ("Mr. Guzman").

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

**FINDINGS OF FACT**

1. Mr. Guzman owns and operates a landscape irrigation business located at 5822 Chinaberry Drive, Houston, Harris County, Texas (the "Business").
2. Mr. Guzman sells, designs, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Guzman is subject to TCEQ jurisdiction pursuant to TEX. OCCUPATIONS CODE ch. 1903, TEX. WATER CODE ch. 37, and the rules of the TCEQ.
3. During a record review conducted on October 6, 2008, a TCEQ Central Office investigator documented that Mr. Guzman failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system located at 16022 Drifting Rose Circle, Cypress, Harris County, Texas.
4. Mr. Guzman received notice of the violation on or about April 22, 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 Angel Guzman" (the "EDPRP") in the TCEQ Chief Clerk's office on September 22, 2009.
6. By letter dated September 22, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Guzman 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. Guzman received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Guzman received notice of the EDPRP, provided by the Executive Director. Mr. Guzman 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. Guzman 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. Guzman failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system, in violation of TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a)<sup>1</sup>.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Guzman 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. Guzman 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. Guzman and assess the penalty recommended by the Executive Director.

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<sup>1</sup> 30 TEX. ADMIN CODE § 344.4(a) is now found at 30 TEX. ADMIN CODE § 344.30(a) adopted to be effective January 1, 2009, 33 TEX. REG. 5713.

5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Guzman 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 one thousand three hundred sixty dollars (\$1,360.00) 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. Guzman is assessed an administrative penalty in the amount of one thousand three hundred sixty dollars (\$1,360.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Guzman'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: Angel Guzman; Docket No. 2009-0899-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. Guzman shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Mr. Guzman shall cease selling, designing, consulting, installing, maintaining, altering, repairing or servicing landscape irrigation systems 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. Guzman shall submit written certification and 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 fine and imprisonment for knowing violations.”

Mr. Guzman 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:

Ms. Monica Harris  
Water Section Manager  
Texas Commission on Environmental Quality  
Field Operations Division  
P. O. Box 13087, MC 174  
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. Guzman. Mr. Guzman 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. Guzman 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. Guzman's failure to comply is not a violation of this Order. Mr. Guzman shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Guzman shall notify the Executive Director within seven days after Mr. Guzman 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. Guzman shall be made in writing to the Executive Director. Extensions are not effective until Mr. Guzman 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. Guzman if the Executive Director determines that Mr. Guzman 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.

Angel Guzman  
Docket No. 2009-0899-LII-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

