

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1701-LII-E TCEQ ID RN105766752 CASE NO. 38559
RESPONDENT NAME: ALBERTO GARCIA

ORDER TYPE:		
<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	
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: 521 Red Oak Street, Allen, Dallas County

TYPE OF OPERATION: Landscape irrigation business

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There was one complaint alleging that Respondent advertised "sprinkler systems & repairs" on www.craigslist.org and no irrigator license number was included in the advertisement. There are no additional enforcement actions pending against this respondent.

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 April 12, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Philip Aldridge, Waste Enforcement Section, MC 128, (512) 239-0855

TCEQ Regional Contact: Mr. Sid Slocum, Dallas/Fort Worth Regional Office, MR R-4, (817) 588-5800

Respondent: Mr. Alberto Garcia, 521 Red Oak Street, Allen, Texas 75002

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: April 13, 2009</p> <p>Date of Investigation Relating to this Case: July 14, 2009</p> <p>Date of NOE Relating to this Case: September 14, 2009</p> <p>Background Facts: The EDPRP was filed on January 21, 2010. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on February 16, 2010.</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 holder of a license or registration without possessing a current license or registration or without employing an individual who holds a current license [30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251].</p>	<p>Total Assessed: \$250</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 Paid to General Revenue: \$250</p> <p>The Respondent paid the administrative penalty in full.</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 proper licensed. 2. Within 15 days, submit written certification demonstrating compliance with Ordering Provision No. 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Oct-2009	Screening	13-Oct-2009	EPA Due	
	PCW	13-Jan-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Alberto Garcia
Reg. Ent. Ref. No.	RN105766752
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38559	No. of Violations	1
Docket No.	2009-1701-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Philip Aldridge
		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	\$250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment due to compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$5
Approx. Cost of Compliance	\$111

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$250

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$250
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$250
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Screening Date 13-Oct-2009

Docket No. 2009-1701-LII-E

PCW

Respondent Alberto Garcia

Policy Revision 2 (September 2002)

Case ID No. 38559

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105766752

Media [Statute] Irrigators

Enf. Coordinator Philip Aldridge

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)

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 adjustment due to compliance history.

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

Screening Date 13-Oct-2009

Docket No. 2009-1701-LII-E

PCW

Respondent Alberto Garcia

Policy Revision 2 (September 2002)

Case ID No. 38559

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105766752

Media [Statute] Irrigators

Enf. Coordinator Philip Aldridge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(b) and 344.30(a)(2), 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 holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license. Specifically, the Respondent advertised irrigation services via a craigslist.org advertisement without a valid irrigator license.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>>Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 91 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

One single event is recommended based on documentation of the violation during a record review conducted on July 14, 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 \$5

Violation Final Penalty Total \$250

This violation Final Assessed Penalty (adjusted for limits) \$250

Economic Benefit Worksheet

Respondent Alberto Garcia
Case ID No. 38559
Req. Ent. Reference No. RN105766752
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
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	\$111	13-Apr-2009	13-Feb-2010	0.84	\$5	n/a	\$5
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain an irrigator license. Date Required is the date of original advertisement on craigslist.
 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: CN603507443 GARCIA, ALBERTO Classification: Rating:
Regulated Entity: RN105766752 ALBERTO GARCIA Classification: Site Rating:
ID Number(s):
Location: 521 RED OAK STREET, ALLEN, TX, 75002
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: October 12, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 12, 2004 to October 12, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Philip Aldridge Phone: 512-239-0855

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 judgments, 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
ALBERTO GARCIA;
RN105766752**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1701-LII-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding the Alberto Garcia (“Mr. Garcia”) under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCC. CODE ch. 1903. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Garcia appear before the Commission and together stipulate that:

1. Mr. Garcia owns a landscaping business located at 521 Red Oak Street, Allen, Dallas County, Texas (the “Business”). Mr. Garcia sells, designs, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Garcia is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903, TEX. WATER CODE ch. 37, and 30 TEX. ADMIN. CODE chs. 30 and 344.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 37.003 because it alleges violations of TEX. OCC. CODE ch. 1903 and TEX. WATER CODE ch. 37 and TCEQ rules.
3. The Commission and Mr. Garcia agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Garcia is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Garcia of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

5. An administrative penalty in the amount of two hundred fifty dollars (\$250.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Mr. Garcia paid two hundred fifty dollars (\$250.00) of the administrative penalty
6. 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.
7. The Executive Director of the TCEQ and Mr. Garcia agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. 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 Mr. Garcia has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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

1. During a record review conducted on July 14, 2009, a TCEQ Central Office investigator documented that Mr. Garcia violated 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251 by failing to refrain from advertising or representing himself to the public as a holder of a license or registration without possessing a current license or registration or without employing an individual who holds a current license. Specifically, Mr. Garcia advertised irrigation services via a craigslist.org advertisement without a valid irrigator license.
2. Mr. Garcia received notice of the violations on or about September 19, 2009.

III. DENIALS

Mr. Garcia generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Garcia pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of TCEQ rules and state statute. The

payment of this administrative penalty and Mr. Garcia'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Alberto Garcia, Docket No. 2009-1701-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. Garcia shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Mr. Garcia 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 Agreed Order, Mr. Garcia 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. Garcia 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

and

Ms. Sandra Mota, Occupational Licensing
Texas Commission on Environmental Quality
Office of Compliance and Enforcement, MC 178
P. O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Garcia. Mr. Garcia is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Business operations referenced in this Agreed Order.
4. If Mr. Garcia 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, Mr. Garcia's failure to comply is not a violation of this Agreed Order. Mr. Garcia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Garcia shall notify the Executive Director within seven days after Mr. Garcia 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 Mr. Garcia shall be made in writing to the Executive Director. Extensions are not effective until Mr. Garcia 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 Mr. Garcia 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.

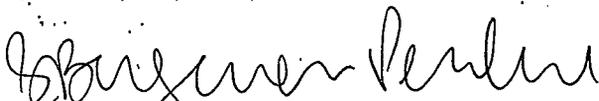
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Mr. Garcia, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Garcia, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Alberto Garcia
TCEQ Docket No. 2009-1701-LLE-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



3/18/2010

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. Garcia's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Garcia;
- 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 against Mr. Garcia;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Garcia; and
- TCEQ seeking other relief as authorized by law.

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

Signature

Date

Alberto Garcia
Name (Printed or typed)
Authorized representative of
Alberto Garcia

Title