

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1595-LII-E RN105797856 CASE NO. 38468
RESPONDENT NAME: GEORGE SANTOS

| | | |
|--|---|--|
| 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: 10618 Odyssey Court, Houston, Harris County

TYPE OF OPERATION: landscape irrigation business

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that the respondent was advertising sprinkler repair on a business card that read "Simply Irrigation System Company" and displayed an invalid irrigator's license number, and that the respondent broke a pipe while making repairs to a well controller and did not fix the broken pipe. There is no record of additional pending enforcement actions regarding this facility respondent.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired June 21, 2010. No comments were received.

CONTACTS AND MAIL 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. Keith Frank, Waste Enforcement Section, MC 128, (512) 239-1203

TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. George Santos, 143 Big Thicket, Richmond, Texas 77469

Mr. George Santos, 10618 Odyssey Court, Houston, Texas 77099

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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: July 20, 2009</p> <p>Date of Investigation Relating to this Case: June 23, 2009</p> <p>Date of NOE Relating to this Case: September 18, 2009</p> <p>Background Facts: The EDPRP was filed on February 1, 2010, and re-filed for service on March 26, 2010. The EDPRP was and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail on March 26, 2010, as "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance. Respondent does not have an irrigator license.</p> <p>LII:</p> <ol style="list-style-type: none"> 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 [30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2), TEX. WATER CODE § 37.003 and TEX. OCC. CODE § 1903.251]. Failed to refrain from using false, misleading, or deceptive practices to bid, advertise, sell, install, maintain, alter, or service irrigation systems and failed to refrain from using or attempting to use the license number of a licensed irrigator [30 TEX. ADMIN. CODE § 344.23, 344.30, and 344.34(b), TEX. WATER CODE § 37.003 and TEX. OCC. CODE § 1903.251]. | <p>Total Assessed: \$750</p> <p>Total Deferred: \$0</p> <p><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: \$750</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>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Cease advertising irrigation system services until properly licensed; and Cease using or attempting to use the license number of someone else. 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 | 21-Sep-2009 | Screening | 1-Oct-2009 | EPA Due | |
| | PCW | 30-Dec-2009 | | | | |

| | | | |
|--|---------------|---------------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | George Santos | | |
| Reg. Ent. Ref. No. | RN105797856 | | |
| Facility/Site Region | 12-Houston | Major/Minor Source | Minor |

| | | | |
|--------------------------------|-----------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 38468 | No. of Violations | 2 |
| Docket No. | 2009-1595-LII-E | Order Type | 1660 |
| Media Program(s) | Irrigators | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Keith Frank |
| | | EC's Team | Enforcement Team 7 |
| Admin. Penalty \$ Limit | Minimum | \$0 | Maximum |
| | | | \$2,500 |

Penalty Calculation Section

| | | |
|---|-------------------|-------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$750 |
|---|-------------------|-------|

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 |
|---------------------------|------------------|--------------------------------|-----|

| | |
|--------------|--|
| Notes | No adjustment due to compliance history. |
|--------------|--|

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------------------|-------------------|-----|

| | |
|--------------|--|
| Notes | The Respondent does not meet the culpability criteria. |
|--------------|--|

| | | |
|--|-------------------|-----|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|-----|

| | | | |
|-------------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|-----|

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

| | | |
|-----------------------------|-----------------------|-------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$750 |
|-----------------------------|-----------------------|-------|

| | | | |
|---|------|-------------------|-----|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% | Adjustment | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|-------|
| Final Penalty Amount | \$750 |
|-----------------------------|-------|

| | | |
|-----------------------------------|-------------------------------|-------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$750 |
|-----------------------------------|-------------------------------|-------|

| | | | | |
|-----------------|------|-----------|-------------------|-----|
| DEFERRAL | 0.0% | Reduction | Adjustment | \$0 |
|-----------------|------|-----------|-------------------|-----|

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

| | |
|--------------|--|
| Notes | Deferral not offered for non-expedited settlement. |
|--------------|--|

| | |
|------------------------|-------|
| PAYABLE PENALTY | \$750 |
|------------------------|-------|

Screening Date 1-Oct-2009

Docket No. 2009-1595-LII-E

PCW

Respondent George Santos

Policy Revision 2 (September 2002)

Case ID No. 38468

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105797856

Media [Statute] Irrigators

Enf. Coordinator Keith Frank

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 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% |
| <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)

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 due to compliance history.

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

Economic Benefit Worksheet

Respondent George Santos
Case ID No. 38468
Reg. Ent. Reference No. RN105797856
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 | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | \$111 | 23-Jun-2009 | 18-Jun-2010 | 0.99 | \$5 | n/a | \$5 |

Notes for DELAYED costs

Estimated cost to obtain an irrigator license. Date Required is the record review date 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

| | | | | |
|--------------------------------|---|---|-----------------|------------|
| Screening Date | 1-Oct-2009 | Docket No. | 2009-1595-LII-E | PCW |
| Respondent | George Santos | <i>Policy Revision 2 (September 2002)</i> | | |
| Case ID No. | 38468 | <i>PCW Revision October 30, 2008</i> | | |
| Reg. Ent. Reference No. | RN105797856 | | | |
| Media [Statute] | Irrigators | | | |
| Enf. Coordinator | Keith Frank | | | |
| 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 person who can perform services for which a license or registration is required when not possessing a current license or registration. Specifically, the Respondent advertised irrigation services on www.superpages.com. | | | |
| Base Penalty | \$2,500 | | | |

>> Environmental, Property and Human Health Matrix

| | | | | | |
|-----------|----------------|-------|----------|----------------|----|
| OR | Harm | | | | |
| | Release | 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 |

Violation Events

| | | | | | |
|-----------------------------------|--|---------------------------------|-----|-------------------------------|-------|
| Number of Violation Events | 1 | Number of violation days | 100 | Violation Base Penalty | \$250 |
| <i>mark only one with an x</i> | daily | | | | |
| | weekly | | | | |
| | monthly | | | | |
| | quarterly | | | | |
| | semiannual | | | | |
| | annual | | | | |
| | single event | | x | | |
| | One single event is recommended based on documentation of the violation during a record review conducted on June 23, 2009. | | | | |

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 |
| | | | \$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 | |

Screening Date 1-Oct-2009 **Docket No.** 2009-1595-LII-E **PCW**
Respondent George Santos *Policy Revision 2 (September 2002)*
Case ID No. 38468 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105797856
Media [Statute] Irrigators
Enf. Coordinator Keith Frank

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code §§ 344.23, 344.34(b) and 344.30, Tex. Water Code § 37.003 and Tex. Occupations Code § 1903.251
Violation Description Failed to refrain from using false, misleading, or deceptive practices to bid, advertise, sell, install, maintain, alter, or service irrigation systems. Failed to refrain from using or attempting to use the license number of a licensed irrigator. Specifically, the Respondent advertised irrigation services via a business card which displayed an invalid license number and displayed the license number of another irrigator on his personal vehicle.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

| OR | Release | Harm | | | Percent |
|----|-----------|-------|----------|-------|---------|
| | | Major | Moderate | Minor | |
| | Actual | | | | 0% |
| | Potential | | | | |

>> Programmatic Matrix

| Matrix Notes | Falsification | Harm | | | Percent |
|---|---------------|-------|----------|-------|---------|
| | | Major | Moderate | Minor | |
| | | x | | | 10% |
| 100% of the rule requirement was not met. | | | | | |

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 2 Number of violation days 2

mark only one with an x

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

Violation Base Penalty \$500

Two single events are recommended based on documentation of the violation during a record review conducted on June 23, 2009.

Good Faith Efforts to Comply 0.0% Reduction \$0

| | Before NOV | NOV to EDRP/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 \$500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$0 **Violation Final Penalty Total** \$500

This violation Final Assessed Penalty (adjusted for limits) \$500

Economic Benefit Worksheet

Respondent George Santos
Case ID No. 38468
Reg. Ent. Reference No. RN105797856
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

| | | | | | | | |
|--------------------------|--|--|--|------|-----|-----|-----|
| 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

Economic benefit included in violation No. 1.

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

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603531237 SANTOS, GEORGE Classification: Rating:
Regulated Entity: RN105797856 SANTOS, GEORGE Classification: Site Rating:

ID Number(s):

Location: 10618 Odyssey Court, Houston, Texas 77099

TCEQ Region:

Date Compliance History Prepared: September 30, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 30, 2004 to September 30, 2009

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

Name: Keith Frank Phone: (512) 239-1203

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?
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
AGAINST
GEORGE SANTOS;
RN105797856**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1595-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 George Santos (“Mr. Santos”).

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

FINDINGS OF FACT

1. Mr. Santos owns and operates a landscape irrigation business located at 10618 Odyssey Court, Houston, Harris County, Texas (the “Business”).
2. Mr. Santos sells, designs, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Santos 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 an investigation conducted on June 23, 2009, a TCEQ Central Office investigator documented that Mr. Santos:
 - a. 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. Santos advertised irrigation services on www.superpages.com; and
 - b. Failed to refrain from using false, misleading, or deceptive practices to bid, advertise, sell, install, maintain, alter, or service irrigation systems and failed to refrain from using or attempting to use the license number of a licensed irrigator. Specifically, Mr. Santos advertised irrigation services via a business card that displayed an invalid

license number and displayed the license number of another irrigator on his personal vehicle.

4. Mr. Santos received notice of the violations on or about September 23, 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 George Santos” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 26, 2010.
6. By letter dated March 26, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Santos 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. Santos received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Santos received notice of the EDPRP, provided by the Executive Director. Mr. Santos 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. Santos 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.a., Mr. Santos 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 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2), TEX. WATER CODE § 37.003 and TEX. OCC. CODE § 1903.251.
3. As evidenced by Finding of Fact No. 3.b., Mr. Santos failed to refrain from using false, misleading, or deceptive practices to bid, advertise, sell, install, maintain, alter, or service irrigation systems and failed to refrain from using or attempting to use the license number of a licensed irrigator, in violation of 30 TEX. ADMIN. CODE §§ 344.23, 344.30, and 344.34(b), TEX. WATER CODE § 37.003 and TEX. OCC. CODE § 1903.251.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Santos with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

5. As evidenced by Finding of Fact No. 7, Mr. Santos failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Santos and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Santos 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.
7. An administrative penalty in the amount of seven hundred fifty dollars (\$750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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. Santos is assessed an administrative penalty in the amount of seven hundred fifty dollars (\$750.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Santos'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: George Santos; Docket No. 2009-1595-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. Santos shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Santos shall:

- i. Cease advertising irrigation system services until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 30; and
 - ii. Cease using or attempting to use the license number of someone else, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 30.
- b. Within 15 days after the effective date of this Order, Mr. Santos shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. and ii. 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. Santos shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i. and ii. 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. Sandra Mota, Landscape Irrigation Program
Texas Commission on Environmental Quality
Office of Compliance and Enforcement, MC 235
P. O. Box 13087
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Santos. Mr. Santos 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. Santos 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. Santos's failure to comply is not a violation of this Order. Mr. Santos shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Santos shall notify the Executive Director within seven days after Mr. Santos 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. Santos shall be made in writing to the Executive Director. Extensions are not effective until Mr. Santos 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. Santos if the Executive Director determines that Mr. Santos 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

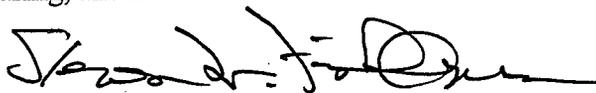
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“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 George Santos’ (the ‘EDPRP’) was filed with the Office of the Chief Clerk on March 26, 2010.

The EDPRP was mailed to Mr. Santos at his last known address on March 26, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Santos received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

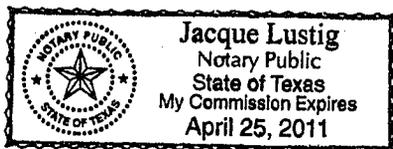
More than 20 days have elapsed since Mr. Santos received notice of the EDPRP. Mr. Santos failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



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 5th day of May, A.D., 2010.




Notary Signature