

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-2006-LII-E TCEQ ID RN105841258 CASE NO. 38831**  
**RESPONDENT NAME: JOSE ABUNDIZ DBA BUNDY'S LANDSCAPE DESIGN**

<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 OCCURRED:** 2150 County Road 484, Elgin, Williamson County

**TYPE OF OPERATION:** landscape irrigation

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that Respondent advertised for and installed an insufficient irrigation system. There is no record of additional pending enforcement actions regarding 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 Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired July 12, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Marshall Coover, Litigation Division, MC 175, (512) 239-0620  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Mr. Tate Barrett, Waste Enforcement Section, MC R-12, (713) 676-3500

**TCEQ Regional Contact:** Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 329-2929

**Respondent:** Mr. Jose Abundiz, Owner, Bundy's Landscape Design, 2150 County Road 484, Elgin, Texas 78621

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS REQUIRED</b>
<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 15, 2009</p> <p><b>Date of Investigation Relating to this Case:</b>            November 30, 2009</p> <p><b>Date of NOE Relating to this Case:</b>            December 4, 2009</p> <p><b>Background Facts:</b>            The EDPRP was filed on April 15, 2010, 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 as "unclaimed." The first class mail has not been returned. 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>            Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent does not have an irrigator license.</p> <p><b>LII:</b>            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 employs an individual who holds a current license [TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(b)].</p>	<p><b>Total Assessed:</b> \$250</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> \$250</p> <p>This is a Default Order. 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>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, cease advertising irrigation system services until properly licensed or until employing an individual who holds a current license.</li> <li>2. Within 15 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	7-Dec-2009			
	<b>PCW</b>	1-Apr-2010	<b>Screening</b>	8-Dec-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Jose Abundiz dba Bundy's Landscape Design				
<b>Reg. Ent. Ref. No.</b>	RN105841258				
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	38831	<b>No. of Violations</b>	1		
<b>Docket No.</b>	2009-2006-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>	Tate Barrett		
		<b>EC's Team</b>	Enforcement Team 7		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$2,500	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustment for compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$4	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$111	

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

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$250
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$250
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$250
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**Screening Date** 8-Dec-2009

**Docket No.** 2009-2006-LII-E

**PCW**

**Respondent** Jose Abundiz dba Bundy's Landscape Design

Policy Revision 2 (September 2002)

**Case ID No.** 38831

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105841258

**Media [Statute]** Irrigators

**Enf. Coordinator** Tate Barrett

### 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 adjustment for compliance history.

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

**Screening Date** 8-Dec-2009 **Docket No.** 2009-2006-LII-E **PCW**  
**Respondent** Jose Abundiz dba Bundy's Landscape Design *Policy Revision 2 (September 2002)*  
**Case ID No.** 38831 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105841258  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Tate Barrett

**Violation Number**   
**Rule Cite(s)** 30 Tex. Admin. Code § 30.5(b), 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 employs an individual who holds a current license. Specifically, Mr. Abundiz was advertising sprinkler system installation on a business card without a valid landscape irrigator's license.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
100% of the rule requirement was not met.					

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

One single event is recommended based on documentation of the violation during the November 30, 2009 record review.

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

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

**Violation Subtotal**

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

**Estimated EB Amount**  **Violation Final Penalty Total**   
**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Jose Abundiz dba Bundy's Landscape Design  
**Case ID No.** 38831  
**Reg. Ent. Reference No.** RN105841258  
**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	30-Nov-2009	8-Aug-2010	0.69	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to obtain an irrigator's license. The date required is the record review date and the final date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$111

**TOTAL**

\$4

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603588617 Abundiz, Jose Classification: Rating:  
Regulated Entity: RN105841258 Bundy's Landscape Design Classification: Site Rating:

ID Number(s):

Location: 2150 COUNTY ROAD 484, ELGIN, TX, 78621

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: December 08, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 08, 2004 to December 08, 2009

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

Name: Tate Barrett Phone: (713) 422-8968

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
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  
JOSE ABUNDIZ DBA BUNDY'S  
LANDSCAPE DESIGN;  
RN105841258**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2009-2006-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 and TEX. OCC. CODE ch. 1903, 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 Jose Abundiz dba Bundy's Landscape Design ("Mr. Abundiz").

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

**FINDINGS OF FACT**

1. Mr. Abundiz owns and operates a landscaping business located at 2150 County Road 484, Elgin, Williamson County, Texas (the "Business"). Mr. Abundiz sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems, and advertises or represents to the public that he can perform any or all of these functions. Therefore, Mr. Abundiz is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903 and TEX. WATER CODE ch. 37.
2. During a record review conducted on November 30, 2009, a TCEQ Central Office investigator documented that Mr. Abundiz 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 employs an individual who holds a current license. Specifically, Mr. Abundiz advertised sprinkler system installation on a business card without holding a valid landscape irrigator's license.
3. Mr. Abundiz received notice of the violation on or about December 9, 2009.
4. 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 Jose

Abundiz dba Bundy's Landscape Design" (the "EDPRP") in the TCEQ Chief Clerk's office on April 15, 2010.

5. By letter dated April 15, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Abundiz with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Abundiz received notice of the EDPRP.
6. More than 20 days have elapsed since Mr. Abundiz received notice of the EDPRP, provided by the Executive Director. Mr. Abundiz 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 No. 1, Mr. Abundiz is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Mr. Abundiz 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 employs an individual who holds a current license, in violation of TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(b).
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Mr. Abundiz 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. 6, Mr. Abundiz 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. Abundiz and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Abundiz for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two hundred fifty dollars (\$250.00) 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. Abundiz is assessed an administrative penalty in the amount of two hundred fifty dollars (\$250.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Abundiz'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: Jose Abundiz dba Bundy's Landscape Design; Docket No. 2009-2006-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. Abundiz shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Mr. Abundiz shall cease advertising irrigation system services until properly licensed or until the Business employs an individual who holds a current license, in accordance with the requirements of 30 TEX. ADMIN. CODE chs. 30 and 344; and,
  - b. Within 15 days after the effective date of this Order, Mr. Abundiz 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. Abundiz 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:

Sandi Mota, Landscape Irrigation Program, MC 235  
Texas Commission on Environmental Quality  
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. Abundiz. Mr. Abundiz 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. Abundiz 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. Abundiz's failure to comply is not a violation of this Order. Mr. Abundiz shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Abundiz shall notify the Executive Director within seven days after Mr. Abundiz 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. Abundiz shall be made in writing to the Executive Director. Extensions are not effective until Mr. Abundiz 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. Abundiz

if the Executive Director determines that Mr. Abundiz 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

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For the Commission

**AFFIDAVIT OF MARSHALL COOVER**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Marshall Coover. 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 Jose Abundiz dba Bundy's Landscape Design” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 15, 2010.

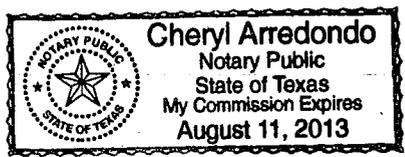
The EDPRP was mailed to Mr. Abundiz at his last known address on April 15, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Abundiz received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

  
\_\_\_\_\_  
Marshall Coover, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Marshall Coover, 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 21<sup>st</sup> day of May, A.D., 2010.



  
\_\_\_\_\_  
Notary Signature