

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2010-0164-LII-E RN103281267 CASE NO. 39086**  
**RESPONDENT NAME: MARK WILLIAM DAILEY**

<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 VIOLATIONS OCCURRED:** 25661 North Highway 281, # 100, San Antonio, Bexar County; 21418 Ligura Drive, San Antonio, Comal County; 1106 Springfield, San Antonio, Bexar County; and 21326 Hampton Park, San Antonio, Comal County.

**TYPE OF OPERATION:** Landscape irrigation company.

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received on May 13, 2009, alleging that Respondent installed irrigation systems for a homebuilder and refused to honor the warranties. Subsequent to the initiation of this enforcement action, a complaint was received on February 11, 2010, alleging that Respondent obtained permits to install twenty-seven (27) irrigation systems in Bexar County and did not request final inspections for those systems as required by local ordinance. Respondent owes \$852 in past-due administrative penalties (TCEQ Default Order 2009-0902-LII-E, approved on June 2, 2010). The Litigation Division has recommended to the Landscape Irrigation Program that an action to revoke Respondent's irrigator license be initiated.

**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 July 12, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

- TCEQ Attorney:** Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
- TCEQ Enforcement Coordinator:** Ms. Danielle Porras, Waste Enforcement Section, MC 128, (512) 239-2602
- TCEQ Regional Contact:** Ms. Lynn Bumguardner, San Antonio Regional Office, MC R-13, (210) 403-4050
- Respondent:** Mr. Mark William Dailey, 25661 North Highway 281, # 100, San Antonio, Texas 78258
- 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 TAKEN/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 type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      May 13, 2009</p> <p><b>Date of Investigation Relating to this Case:</b>                      January 7, 2010</p> <p><b>Date of NOE Relating to this Case:</b>                      January 12, 2010</p> <p><b>Background Facts:</b>                      The EDPRP was filed on April 7, 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 file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                      The complainant hired a third-party to repair the irrigation systems that are the subject of this enforcement action. Subsequent complaints regarding Respondent have been received and the Litigation Division has recommended to the Landscape Irrigation Program that an action be initiated to revoke Respondent's irrigator license.</p> <p><b>LII:</b>                      Failed to adhere to terms of the warranty for the installation of a new irrigation system [30 TEX. ADMIN. CODE § 344.72].</p>	<p><b>Total Assessed:</b> \$1,358</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> \$1,358                      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>The complainant hired a third-party to repair the irrigation systems that are the subject of this enforcement action.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	20-Jan-2010			
	<b>PCW</b>	22-Feb-2010	<b>Screening</b>	25-Jan-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Mark William Dailey
<b>Reg. Ent. Ref. No.</b>	RN103281267
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	39086	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-0164-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>	Danielle Porras
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit 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>	\$750
---	-------------------	-------

### 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>	7.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$52
---------------------------	------------------	--------------------------------	------

Notes: Enhancement one NOV with same or similar violations and one NOV with dissimilar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts \$556  
 Approx. Cost of Compliance \$513  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$802
-----------------------------	-----------------------	-------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	69.3%	<b>Adjustment</b>	\$556
---	-------	-------------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with the violation.

<b>Final Penalty Amount</b>	\$1,358
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,358
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$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.

<b>PAYABLE PENALTY</b>	\$1,358
------------------------	---------

**Screening Date** 25-Jan-2010

**Docket No.** 2010-0164-LII-E

**PCW**

**Respondent** Mark William Dailey

Policy Revision 2 (September 2002)

**Case ID No.** 39086

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN103281267

**Media [Statute]** Irrigators

**Enf. Coordinator** Danielle Porras

### 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> )	1	5%
	Other written NOVs	1	2%
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)** 7%

#### >> 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**

Enhancement one NOV with same or similar violations and one NOV with dissimilar violations.

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

**Screening Date** 25-Jan-2010 **Docket No.** 2010-0164-LII-E **PCW**  
**Respondent** Mark William Dailey *Policy Revision 2 (September 2002)*  
**Case ID No.** 39086 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN103281267  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Danielle Porras

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**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**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

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**

**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**

**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** Mark William Dailey  
**Case ID No.** 39086  
**Reg. Ent. Reference No.** RN103281267  
**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)				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]	\$513	9-Apr-2009	7-Jan-2010	1.67	\$43	\$513	\$556
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual cost to repair the irrigation systems, as per receipts. The Date Required is the first day of the repairs. The Final Date is the date of the record review.

Approx. Cost of Compliance

\$513

**TOTAL**

\$556

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601801897 Dailey, Mark William Classification: Rating:  
Regulated Entity: RN103281267 Dailey, Mark William Classification: Site Rating:  
ID Number(s): LANDSCAPE IRRIGATION LICENSING LICENSE LI0004576  
Location: 25661 N HWY 281 # 100, SAN ANTONIO, TX, 78258  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: February 03, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: February 03, 2005 to February 03, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Danielle Porras Phone: (512) 239-2602

---

## 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.)

#### Date: 09/29/2008 (686071)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 344, SubChapter F 344.96  
Description: Failure by a licensed irrigator to present the customer, on all installations of new irrigation systems (i.e. excluding remodeling and renovation), a written statement of guarantees for materials and labor furnished in the installation of the irrigation system and honor the warranty. Specifically, during a record review investigation initiated on 08/08/08, it was documented that Mr. Mark W. Dailey, Dailey Sprinkler Systems, Inc., Landscape Irrigator License Number 4576 installed a irrigation system at the site location of 2808 Kingsland Circle, Schertz, Guadalupe County, Texas and will not honor the warranty.

#### Date: 03/06/2009 (735674)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 344, SubChapter F 344.95(c)  
Description: Failure to note on the written agreement those areas which were excluded and not part of the irrigation coverage. Specifically, during the record review investigation initiated on 02/17/2009 it was documented by Mr. Richard Allen, TCEQ Compliance Support Division, that Mr. Mark Dailey, Irrigation License Number 4576, Dailey Sprinkler Systems, Inc. did in fact fail to provide 100% moisture coverage as per the contract dated 12/02/2005.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 344, SubChapter G 344.70(b)  
Description: Failure to include in all advertisements the irrigator's license number in the form of "LI\_\_\_\_." Specifically, during the investigation on 02/17/2009, it was documented by Mr. Richard Allen, TCEQ Compliance Support Division, that Mr. Mark Dailey, Irrigation License Number 4576, Dailey Sprinklers, failed to properly display his landscape irrigation license number in his Yellowpages.com advertisement.

- 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  
MARK WILLIAM DAILEY;  
RN103281267**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2010-0164-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 Mark William Dailey (“Respondent”).

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

**FINDINGS OF FACT**

1. The Respondent owns and operates a landscape irrigation company at 25661 North Highway 281, #100, San Antonio, Bexar County, Texas (the “Facility”).
2. The Respondent holds and maintains landscape irrigator license no. LI0004576, issued by the TCEQ on January 14, 2009, and sells, designs, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Respondent 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 January 7, 2010, a TCEQ Austin Central Office investigator documented that Respondent failed to adhere to terms of the warranty for the installation of a new irrigation system. Specifically, the Respondent installed new irrigation systems and did not adhere to their warranties by failing to perform warranty service and/or repair work at the following three locations: 21418 Ligura Drive, San Antonio, Comal County, Texas; 1106 Springfield, San Antonio, Bexar County, Texas; and 21326 Hampton Park, San Antonio, Comal County, Texas.
4. Respondent received notice of the violations on or about January 17, 2010.

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 Mark William Dailey” (the “EDPRP”) in the TCEQ Chief Clerk’s office on April 7, 2010.
6. By letter dated April 7, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent 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 Respondent received notice of the EDPRP.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent 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 Findings of Fact Nos. 1 and 2, Respondent 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. 3, Respondent failed to adhere to terms of the warranty for the installation of three new irrigation systems, in violation of 30 TEX. ADMIN. CODE § 344.72.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Respondent 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, Respondent 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 Respondent 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 Respondent 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 fifty-eight dollars (\$1,358.00) 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. Respondent is assessed an administrative penalty in the amount of one thousand three hundred fifty-eight dollars (\$1,358.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Respondent'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: Mark William Dailey; Docket No. 2010-0164-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written

approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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 GARY K. SHIU**

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

“My name is Gary K. Shiu. 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 Mark William Dailey” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 7, 2010.

The EDPRP was mailed to Respondent at his last known address on April 7, 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 Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

  
\_\_\_\_\_  
Gary K. Shiu, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, 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 16 day of June, A.D., 2010.

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

