

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-1580-LII-E TCEQ ID RN105750699 CASE NO. 38441**  
**RESPONDENT NAME: MIGUEL GUERRERO**

<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

**SITES WHERE VIOLATIONS OCCURRED:** 8737 Linden Road, Del Valle, Travis County; 1509 Barn Swallow Drive, Austin, Travis County

**TYPE OF OPERATION:** landscaping business

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that Respondent was advertising irrigation services in the February 19-25, 2009, edition of the Austin/Central Texas Greensheet without including an irrigator license number, and provided an estimate for the installation of an irrigation system while not holding a valid irrigation license. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** The complainant has not indicated a desire to protest this action or 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 July 26, 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. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492

**TCEQ Regional Contact:** Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 339-2929

**Respondent:** Mr. Miguel Guerrero, 8737 Linden Road, Del Valle, Texas 78617-5812

**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 checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>  March 31, 2009</p> <p><b>Date of Investigation Relating to this Case:</b>  June 5, 2009</p> <p><b>Date of NOE Relating to this Case:</b>  September 9, 2009</p> <p><b>Background Facts:</b>  The EDPRP was filed on January 21, 2010. The EDFARP was filed on May 3, 2010. The EDPRP and EDFARP were mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrappers 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>  Respondent does not have an irrigator license.</p> <p><b>LII:</b></p> <ol style="list-style-type: none"> <li>Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a current license or registration is required [30 TEX. ADMIN. CODE § 30.5(b)].</li> <li>Failed to hold a valid irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system [30 TEX. ADMIN. CODE § 30.5(a), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251].</li> </ol>	<p><b>Total Assessed:</b> \$500</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> \$500</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>Immediately cease advertising, selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed.</li> <li>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>	18-Sep-2009	<b>Screening</b>	23-Sep-2009	<b>EPA Due</b>	
	<b>PCW</b>	7-Jan-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Miguel Guerrero
<b>Reg. Ent. Ref. No.</b>	RN105750699
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	38441	<b>No. of Violations</b>	2	
<b>Docket No.</b>	2009-1580-LII-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Irrigators	<b>Government/Non-Profit</b>	No	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Michael Meyer	
		<b>EC's Team</b>	Enforcement Team 6	
<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>	\$500
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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	\$5	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$111	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$500
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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>	\$500
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$500
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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>	\$500
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Screening Date 23-Sep-2009

Docket No. 2009-1580-LII-E

PCW

Respondent Miguel Guerrero

Policy Revision 2 (September 2002)

Case ID No. 38441

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105750699

Media [Statute] Irrigators

Enf. Coordinator Michael Meyer

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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 for compliance history.

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

<b>Screening Date</b> 23-Sep-2009	<b>Docket No.</b> 2009-1580-LII-E	<b>PCW</b>			
<b>Respondent</b> Miguel Guerrero		<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 38441		<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN105750699					
<b>Media [Statute]</b> Irrigators					
<b>Enf. Coordinator</b> Michael Meyer					
<b>Violation Number</b>	1				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 30.5(b)				
<b>Violation Description</b>	Failed to to refrain from advertising or representing himself to the public as a person who can perform services for which a current license or registration is required. Specifically, the Respondent was advertising irrigation services in the February 19-25, 2009 edition of the Austin/Central Texas Greensheet without possessing an irrigator's license.				
	<b>Base Penalty</b>	\$2,500			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>	<b>Release</b>	<b>Harm</b>			
		Major      Moderate      Minor			
	Actual	<input type="text"/>	<input type="text"/>		
	Potential	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	
<b>&gt;&gt;Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of the rule requirement was not met.				
	<b>Adjustment</b>			\$2,250	
				\$250	
<b>Violation Events</b>					
	Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="110"/>	Number of violation days	
	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 type="text" value="x"/>			
<i>mark only one with an x</i>				<b>Violation Base Penalty</b> <input type="text" value="\$250"/>	
One single event is recommended.					
<b>Good Faith Efforts to Comply</b>					
	<b>0.0%</b> Reduction			<input type="text" value="\$0"/>	
		Before NOV	NOV to EDPRP/Settlement		
	Extraordinary	<input type="text"/>	<input type="text"/>		
	Ordinary	<input type="text"/>	<input type="text"/>		
	N/A	<input type="text" value="x"/>	(mark with x)		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.				
				<b>Violation Subtotal</b> <input type="text" value="\$250"/>	
<b>Economic Benefit (EB) for this violation</b>					
<b>Statutory Limit Test</b>					
	Estimated EB Amount	<input type="text" value="\$5"/>	Violation Final Penalty Total	<input type="text" value="\$250"/>	
				<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$250"/>	

## Economic Benefit Worksheet

**Respondent** Miguel Guerrero  
**Case ID No.** 38441  
**Reg. Ent. Reference No.** RN105750699  
**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	5-Jun-2009	15-Apr-2010	0.86	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to obtain an irrigator license. The date required is the record review date and the final date is the projected 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** 23-Sep-2009 **Docket No.** 2009-1580-LII-E **PCW**  
**Respondent** Miguel Guerrero *Policy Revision 2 (September 2002)*  
**Case ID No.** 38441 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105750699  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Michael Meyer

**Violation Number**   
**Rule Cite(s)** 30 Tex. Admin. Code § 30.5(a), Tex. Water Code § 37.003 and Tex. Occupations Code § 1903.251  
**Violation Description** Failed to hold a valid irrigator license prior to selling, designing, consulting, installing, altering, repairing or servicing an irrigation system. Specifically, the Respondent provided an estimate for the installation of an irrigation system at 1509 Barn Swallow Drive in Austin, Texas without an irrigator license.  
**Base Penalty**

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

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

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	
<input type="text" value="100% of the rule requirement was not met."/>					
<b>Adjustment</b>					<input type="text" value="\$2,250"/>

**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 EDPRP/Settlement Offer
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	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	

**Violation Subtotal**

**Economic Benefit (EB) for this violation**  **Statutory Limit Test**  
**Violation Final Penalty Total**   
**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Miguel Guerrero  
**Case ID No.** 38441  
**Reg. Ent. Reference No.** RN105750699  
**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

See economic benefit for 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:	CN603495953	GUERRERO, MIGUEL	Classification:	Rating:
Regulated Entity:	RN105750699	GUERRERO MIGUEL	Classification:	Site Rating:
ID Number(s):				
Location:	8737 LINDEN RD, DEL VALLE, TX, 78617			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	September 23, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 24, 2004 to September 23, 2009			

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

Name: Michael Meyer Phone: (512) 239 - 4492

## Site Compliance History Components

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

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MIGUEL GUERRERO;  
RN105750699**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2009-1580-LII-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s First Amended 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 Miguel Guerrero (“Mr. Guerrero”).

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

**FINDINGS OF FACT**

1. Mr. Guerrero owns and operates a landscaping business located at 8737 Linden Road, Del Valle, Travis County, Texas (the “Business”). Mr. Guerrero sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Guerrero is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903, TEX. WATER CODE ch. 37, and the rules of the TCEQ.
2. During a record review conducted on June 5, 2009, a TCEQ Central Office investigator documented that Mr. Guerrero:
  - a. Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a current license or registration is required. Specifically, Mr. Guerrero was advertising irrigation services in the February 19-25, 2009 edition of the Austin/Central Texas Greensheet without possessing an irrigator’s license; and,
  - b. Failed to hold a valid irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system. Specifically, Mr. Guerrero provided an estimate for the installation of an irrigation system at 1509 Barn Swallow Drive in Austin, Travis County, Texas without an irrigator license.

3. Mr. Guerrero received notice of the violations on or about September 14, 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 Miguel Guerrero” (the “EDPRP”) in the TCEQ Chief Clerk’s office on January 21, 2010.
5. By letter dated January 21, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Guerrero 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. Guerrero received notice of the EDPRP.
6. The Executive Director filed the “Executive Director’s First Amended 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 Miguel Guerrero” (the “EDFARP”) in the TCEQ Chief Clerk’s office on May 3, 2010.
7. By letter dated May 3, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Guerrero with notice of the EDFARP. 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. Guerrero received notice of the EDFARP.
8. More than 20 days have elapsed since Mr. Guerrero received notice of the EDPRP and the EDFARP, provided by the Executive Director. Mr. Guerrero failed to file an answer, 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. Guerrero 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.a., Mr. Guerrero failed to refrain from advertising or representing himself to the public as a person who can perform services for which a current license or registration is required, in violation of 30 TEX. ADMIN. CODE § 30.5(b).
3. As evidenced by Finding of Fact No. 2.b., Mr. Guerrero failed to hold a valid irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system, in violation of 30 TEX. ADMIN. CODE § 30.5(a), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251.

4. As evidenced by Findings of Fact Nos. 4 through 7, the Executive Director timely served Mr. Guerrero with proper notice of the EDPRP and the EDFARP, 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. 8, Mr. Guerrero 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. Guerrero 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. Guerrero 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 five hundred dollars (\$500.00) 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. Guerrero is assessed an administrative penalty in the amount of five hundred dollars (\$500.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Guerrero'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: Miguel Guerrero; Docket No. 2009-1580-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. Guerrero shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Mr. Guerrero shall cease advertising, selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 30; and,
  - b. Within 15 days after the effective date of this Order, Mr. Guerrero 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. Guerrero 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. Guerrero. Mr. Guerrero 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. Guerrero 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. Guerrero's failure to comply is not a violation of this Order. Mr. Guerrero shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Guerrero shall notify the Executive Director within seven days after Mr. Guerrero 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. Guerrero shall be made in writing to the Executive Director. Extensions are not effective until Mr. Guerrero 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. Guerrero if the Executive Director determines that Mr. Guerrero 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.

**Miguel Guerrero**  
**Docket No. 2009-1580-LII-E**  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

