

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2010-0496-OSS-E      RN105691786      CASE NO. 39413**  
**RESPONDENT NAME: ERASMO GARCIA**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 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"/> ON-SITE SEWAGE FACILITY
<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:** 123 County Road 409, Brady, McCulloch County

**TYPE OF OPERATION:** On-Site Sewage Facility ("OSSF")

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired November 22, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503  
 Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Jordon Jones, Air Enforcement Section, MC 149, (512) 239-2569

**TCEQ Regional Contact:** Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479

**Respondent:** Erasmo Garcia, 123 County Road 409, Brady, Texas 76825

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input 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:</b> None</p> <p><b>Date of Investigation:</b> March 8, 2010</p> <p><b>Date of NOE:</b> March 12, 2010</p> <p><b>Background Facts:</b> The EDPRP was filed on August 16, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. The EDPRP sent by certified mail was returned "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 has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>OSS:</b> Failed to obtain authorization to construct an OSSF [30 TEX. ADMIN. CODE § 285.3(b)(1) and TEX. HEALTH &amp; SAFETY CODE § 366.051(a)].</p>	<p><b>Total Assessed:</b> \$262</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$262</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p><b>Compliance History Classifications:</b>                  Person/CN - N/A                  Site/RN - 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. Within 30 days:                         <ol style="list-style-type: none"> <li>a. Uncover the existing unauthorized OSSF and notify the TCEQ San Angelo Regional Office to allow an on-site inspection of the OSSF;</li> <li>b. Complete and submit the required OSSF permit application and application fee.</li> <li>c. Respond completely and adequately, as determined by the TCEQ, to any requests for information concerning the permit application and address any deficiencies identified by the TCEQ San Angelo Regional Office within 30 days of such request or by any other deadline specified in writing.</li> </ol> </li> <li>2. Within 75 days, either submit documentation that a permit has been obtained for the OSSF, or submit documentation that operation of the OSSF has ceased and the OSSF has been properly removed or abandoned.</li> <li>3. Within 90 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>TCEQ</b> DATES	Assigned	8-Mar-2010	Screening	22-Mar-2010	EPA Due	
	PCW	22-Jul-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Erasmio Garcia		
Reg. Ent. Ref. No.	RN105691786		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39413	No. of Violations	1
Docket No.	2010-0496-OSS-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jordan Jones
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$2,500

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$250

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 5.0% Enhancement Subtotals 2, 3, & 7 \$12

Notes: Enhancement recommended for one NOV with same or similar violations as those in the current action.

**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	\$34
Approx. Cost of Compliance	\$360

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$262

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$262

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$262

**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** \$262

Screening Date 22-Mar-2010

Docket No. 2010-0496-OSS-E

PCW

Respondent Erasmo Garcia

Policy Revision 2 (September 2002)

Case ID No. 39413

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105691786

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jordan Jones

### 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)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> 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

Enhancement recommended for one NOV with same or similar violations as those in the current action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date: 22-Mar-2010

Docket No.: 2010-0496-OSS-E

PCW

Respondent: Erasmo Garcia

Policy Revision 2 (September 2002)

Case ID No.: 39413

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN105691786

Media [Statute]: On-Site Sewage Disposal

Enf. Coordinator: Jordan Jones

Violation Number: 1

Rule Cite(s): 30 Tex. Admin. Code § 285.3(b)(1) and Texas Health & Safety Code § 366.051(a)

Violation Description: Failed to obtain an authorization to construct an on-site sewage facility (OSSF). Specifically, the Respondent installed an OSSF at the Site without first obtaining the required authorization, as documented during a record review conducted on March 08, 2010.

Base Penalty: \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	X			10%

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

Adjustment: \$2,250

\$250

Violation Events

Number of Violation Events: 1 Number of violation days: 14

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty: \$250

One monthly event is recommended from the record review date of March 08, 2010, to the screening date of March 22, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	Before NOV	NOV to EDPRP/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: \$34

Violation Final Penalty Total: \$263

This violation Final Assessed Penalty (adjusted for limits): \$263

## Economic Benefit Worksheet

**Respondent:** Erasmo Garcia  
**Case ID No.:** 39413  
**Reg. Ent. Reference No.:** RN105691786  
**Media:** On-Site Sewage Disposal  
**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
<small>No commas or \$</small>							

### 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	\$210	13-Feb-2009	31-Dec-2010	1.88	\$20	n/a	\$20
Other (as needed)	\$150	13-Feb-2009	31-Dec-2010	1.88	\$14	n/a	\$14

#### Notes for DELAYED costs

Estimated cost to submit an application for an on-site sewage facility for a single-family dwelling and the cost for planning and materials. Date required is the original investigation date. Final date is the expected 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

\$360

TOTAL

\$34

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603450149 GARCIA, ERASMO Classification: Rating:  
Regulated Entity: RN105691786 OSSF LOCATED AT 123 COUNTY ROAD 409 Classification: Site Rating:  
ID Number(s):  
Location: 123 COUNTY ROAD 409, BRADY, TX, 76825  
TCEQ Region: REGION 08 - SAN ANGELO  
Date Compliance History Prepared: March 26, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: March 26, 2005 to March 26, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jordan Jones Phone: 512-239-2569

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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
6. Rating Date: 3/22/2010 Repeat Violator: NO

## 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.)  
1 03/12/2010 (794665)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 04/14/2009 (742438)  
Self NO Classification: Major  
Citation: 30 TAC Chapter 285, SubChapter A 285.3(b)(1)  
5B THSC Chapter 366, SubChapter A 366.004  
Description: Failure to obtain Authorization to Construct (ATC), prior to altering and or repairing an alleged damaged or failed On-Site Sewage Facility (OSSF) on site.
- 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
- K. Sites Outside of Texas  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ERASMO GARCIA;  
RN105691786

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2010-0496-OSS-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 ch. 7, TEX. HEALTH & SAFETY CODE ch. 366, 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 Erasmo Garcia ("Respondent").

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

**FINDINGS OF FACT**

1. Respondent owns and operates an On-Site Sewage Facility ("OSSF") located at 123 County Road 409, Brady, McCulloch County, Texas (the "Site").
2. The Site is an OSSF as defined in 30 TEX. ADMIN. CODE § 285.2(45) and the TCEQ has general authority to regulate the location, design, construction, installation, and proper functioning of OSSFs pursuant to TEX. HEALTH & SAFETY CODE ch. 366.
3. During a record review conducted on March 8, 2010, a TCEQ San Angelo Regional investigator documented that Respondent failed to obtain authorization to construct an OSSF. Specifically, Respondent installed an OSSF at the Site without first obtaining the required authorization.
4. Respondent received notice of the violation on or about March 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 Erasmo Garcia" (the "EDPRP") in the TCEQ Chief Clerk's office on August 16, 2010.
6. By letter dated August 16, 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. 7, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Respondent failed to obtain authorization to construct an OSSF, in violation of 30 TEX. ADMIN. CODE § 285.3(b)(1) and TEX. HEALTH & SAFETY CODE § 366.051(a).
3. As evidenced by Findings 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 and the Texas Health and Safety 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 sixty-two dollars (\$262.00) 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 two hundred sixty-two dollars (\$262.00) 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.
2. 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: Erasmus Garcia; Docket No. 2010-0496-OSS-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

3. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Respondent shall:
    - i. Uncover the existing unauthorized OSSF and notify the TCEQ San Angelo Regional Office to allow an on-site inspection of the OSSF; and
    - ii. Complete and submit the required OSSF permit application and application fee to the following address:

Mr. Mark Newman, Water Section Manager  
San Angelo Regional Office  
Texas Commission on Environmental Quality  
622 S. Oakes, Suite K  
San Angelo, Texas 76903-7035

- b. Respond completely and adequately, as determined by the TCEQ, to any requests for information concerning the permit application and address any deficiencies identified

by the TCEQ San Angelo Regional Office within 30 days of such request or by any other deadline specified in writing; and

- c. Within 75 days after the effective date of this Order, Respondent shall either submit documentation that a permit has been obtained for the OSSF, or submit documentation that operation of the OSSF has ceased and the OSSF has been properly removed or abandoned, as described in Ordering Provision No. 2.e. below; and
- d. Within 90 days after the effective date of this Order, Respondent shall submit written certification as described below in Ordering Provision No. 2.e., and include detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision No. 2.a.
- e. The certification required by Ordering Provision Nos. 2.c. and 2.d. 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.”

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Mr. Mark Newman, Waste Section Manager  
San Angelo Regional Office  
Texas Commission on Environmental Quality  
622 S. Oakes, Suite K  
San Angelo, Texas 76903-7035

4. All relief not expressly granted in this Order is denied.
5. 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 Site operations referenced in this Order.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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 SHARESASA Y. ALEXANDER**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Sharesa Y. Alexander. 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 Erasmo Garcia” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 16, 2010.

The EDPRP was mailed to Respondent at his last known address on August 16, 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).

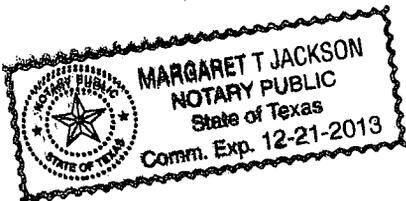
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”

*Sharesa Y. Alexander*

Sharesa Y. Alexander, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Sharesa Y. Alexander, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 4th day of October, A.D., 2010.



*Margaret Jackson*  
Notary Signature