EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-0312-LII-E RN105873335 CASE NO. 39221

RESPONDENT NAME: FRED MARTINEZ D/B/A TEJAS LAWN CARE

ORDER TYPE:		
___ AGREED ORDER	___ FINDINGS AGREED ORDER	___ FINDINGS ORDER FOLLOWING SOAH HEARING
_X_ FINDINGS DEFAULT ORDER	___ SHUTDOWN ORDER	___ IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
___ AMENDED ORDER	___ EMERGENCY ORDER	
CASE TYPE:		
___ AIR	___ MULTI-MEDIA (check all that apply)	___ INDUSTRIAL HAZARDOUS WASTE
___ PUBLIC WATER SUPPLY	___ PETROLEUM STORAGE TANKS	_X_ OCCUPATIONAL CERTIFICATION
___ WATER QUALITY	___ SEWAGE SLUDGE	___ UNDERGROUND INJECTION CONTROL
___ MUNICIPAL SOLID WASTE	___ RADIOACTIVE WASTE	___ DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 710 Meadow View Drive, Leander, Williamson County

TYPE OF OPERATION: landscaping business

SMALL BUSINESS: _X_ Yes ___ No ___ N/A

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that Respondent advertised "irrigation installations, repairs and maintenance" on the Austin Craigslist and did not include a license irrigator number in the advertisement. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not expressed 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 November 8, 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: James Nolan, Air Enforcement Section, MC 149, (512) 239-6634
TCEQ Regional Contact: Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5700
Respondent: Fred Martinez, Owner, Tejas Lawn Care, 710 Meadow View Drive, Leander, Texas 78641
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint ___ Routine ___ Enforcement Follow-up _X_ Records Review **Date of Complaint:** August 10, 2009 **Date of Investigation:** February 2, 2010 **Date of NOE:** March 29, 2010 **Background Facts:** The EDPRP was filed on June 23, 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. The EDFARP was filed on August 25, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. According to the return receipt "green card," Respondent received the EDFARP on August 26, 2010. Respondent failed to file an answer and failed to request a hearing. **Current Compliance Status:** Respondent has not yet submitted documentation demonstrating compliance with the technical requirements. **LII:** Failed to refrain from advertising or representing himself to the public as a holder of a license or registration without possessing a current license or registration and without employing an individual who holds a current license [30 TEX. ADMIN. CODE § 30.5(b) and TEX. WATER CODE § 37.003].	**Total Assessed:** $500 **Total Deferred:** $0 ___ Expedited Order ___ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Due to General Revenue:** $500 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. **Compliance History Classifications:** *Person/CN* – N/A *Site/RN* – N/A **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** Respondent shall undertake the following technical requirements: 1. Immediately cease advertising irrigation system services until properly licensed. 2. Within 15 days, submit written certification demonstrating compliance.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	8-Feb-2010				
PCW	28-May-2010	Screening	24-Feb-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Fred Martinez dba Tejas Lawn Care		
Reg. Ent. Ref. No.	RN105873335		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39221	No. of Violations	1
Docket No.	2010-0312-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	James Nolan
		EC's Team	Enforcement Team 4
Admin. Penalty $ Limit Minimum	$0	Maximum	$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)		*Subtotal 1*	$500
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	0.0% Enhancement	*Subtotals 2, 3, & 7*	$0
Notes	No adjustment due to compliance history.		
Culpability	No; 0.0% Enhancement	*Subtotal 4*	$0
Notes	The Respondent does not meet the culpability criteria.		
Good Faith Effort to Comply Total Adjustments		*Subtotal 5*	$0
Economic Benefit	0.0% Enhancement*	*Subtotal 6*	$0
Total EB Amounts	$3	**Capped at the Total EB $ Amount*	
Approx. Cost of Compliance	$111		
SUM OF SUBTOTALS 1-7		*Final Subtotal*	$500
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	*Adjustment*	$0
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes			
		Final Penalty Amount	$500
STATUTORY LIMIT ADJUSTMENT		*Final Assessed Penalty*	$500
DEFERRAL	0.0% Reduction	*Adjustment*	$0
Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*			
Notes	Deferral not offered for non-expedited settlement.		
PAYABLE PENALTY			$500

Screening Date	24-Feb-2010	**Docket No.**	2010-0312-LII-E	**PCW**
Respondent	Fred Martinez dba Tejas Lawn Care			*Policy Revision 2 (September 2002)*
Case ID No.	39221			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105873335			
Media [Statute]	Irrigators			
Enf. Coordinator	James Nolan			

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%

		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) 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 due to compliance history.

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

Screening Date	24-Feb-2010	**Docket No.** 2010-0312-LII-E	**PCW**
Respondent	Fred Martinez dba Tejas Lawn Care		*Policy Revision 2 (September 2002)*
Case ID No.	39221		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105873335		
Media [Statute]	Irrigators		
Enf. Coordinator	James Nolan		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 30.5(b) and Tex. Water Code § 37.003

Violation Description Failed to refrain from advertising or representing themselves to the public as a holder of a license or registration unless they possess a current license or registration or unless they employ an individual who holds a current license. Specifically, the Respondent advertised irrigation services via an Austin Craigslist advertisement and a company webpage without a valid irrigator license.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $2,250

$250

Violation Events

Number of Violation Events: 2

22 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

Two single events are recommended, one for each advertisement.

Good Faith Efforts to Comply

0.0% Reduction $0

	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 $500

Economic Benefit (EB) for this violation

Estimated EB Amount $3

Statutory Limit Test

Violation Final Penalty Total $500

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

Economic Benefit Worksheet

Respondent Fred Martinez dba Tejas Lawn Care
Case ID No. 39221
Reg. Ent. Reference No. RN105873335
Media Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$111	2-Feb-2010	2-Aug-2010	0.50	$3	n/a	$3
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to obtain an irrigator license and to revise the company website. Date Required is the date of the record review 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 $3

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603622937	MARTINEZ, FRED	Classification:	Rating:
Regulated Entity:	RN105873335	MARTINEZ FRED	Classification:	Site Rating:

ID Number(s):

Location: 710 MEADOW VIEW DR, LEANDER, TX, 78641

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: March 01, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 24, 2005 to February 24, 2010

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

Name: James Nolan Phone: (512) 239-6634

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
6. Rating Date: 9/1/2009 Repeat Violator: NO

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 FRED MARTINEZ DBA TEJAS LAWN CARE; RN105873335	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0312-LII-E

At its _____ agenda meeting, 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 Fred Martinez d/b/a Tejas Lawn Care ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a landscaping business located at 710 Meadows View Drive in Leander, Williamson County, Texas (the "Business"). Respondent sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems and is required to be licensed under 30 TEX. ADMIN. CODE ch. 30. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903.

2. During a record review conducted on February 2, 2010, a TCEQ Central Office investigator documented that Respondent failed to refrain from advertising or representing himself to the public as a holder of a license or registration without possessing a current license or registration and without employing an individual who holds a current license. Specifically, Respondent advertised irrigation services via an Austin Craigslist advertisement and a company webpage without a valid irrigator license and without employing an individual who holds a valid irrigator license.

3. Respondent received notice of the violation on or about April 3, 2010.

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 Fred Martinez d/b/a Tejas Lawn Care" (the "EDPRP") in the TCEQ Chief Clerk's office on June 23, 2010.

5. By letter dated June 16, 2010, sent to Respondent's last known address 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.

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 Fred Martinez d/b/a Tejas Lawn Care" (the "EDFARP") in the TCEQ Chief Clerk's office on August 25, 2010.

7. By letter dated August 25, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the return receipt "green card," Respondent received notice of the EDFARP on August 26, 2010, as evidenced by the signature on the card.

8. More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP, provided by the Executive Director. Respondent 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, 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. 2, Respondent failed to refrain from advertising or representing himself to the public as a holder of a license or registration without possessing a current license or registration and without employing an individual who holds a current license, in violation of 30 TEX. ADMIN. CODE § 30.5(b) and TEX. WATER CODE § 37.003.

3. As evidenced by Findings of Fact Nos. 4 and 5, 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 Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 8, 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.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes 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. Respondent is assessed an administrative penalty in the amount of five hundred dollars ($500.00) for violations of state statutes and 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. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Fred Martinez d/b/a Tejas Lawn Care; Docket No. 2010-0312-LII-E" to:

   Financial Administration Division, Revenues Section
   Texas Commission on Environmental Quality
   Attention: Cashier's Office, MC 214
   P.O. Box 13088
   Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Order, Respondent shall cease advertising irrigation system services until properly licensed or until employing an individual who is 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, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and shall 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
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Tracy Miller, Landscape Irrigation Program, MC 174
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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 Business 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

AFFIDAVIT OF SHARESA 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 Fred Martinez d/b/a Tejas Lawn Care" (the "EDPRP") was filed with the Office of the Chief Clerk on June 23, 2010.

The EDPRP was mailed to Respondent at his last known address on June 23, 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.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 Fred Martinez d/b/a Tejas Lawn Care" (the "EDFARP") was filed with the Office of the Chief Clerk on August 25, 2010.

The EDFARP was mailed to Respondent at his last known address on August 25, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondents received notice of the EDFARP on August 26, 2010, as evidenced by the signature on the card.

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

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 22nd day of September A.D., 2010.

MARGARET T JACKSON
NOTARY PUBLIC
State of Texas
Comm. Exp. 12-21-2013

Margaret Jackson
Notary Signature