

**Executive Summary – Enforcement Matter – Case No. 39857**  
**Juan Kozer d/b/a Kozer & Associates, LLC**  
**RN105934962**  
**Docket No. 2010-0958-LII-E**

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
LII

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
108 Scarlet Oaks Cove, Dale, Caldwell County

**Type of Operation:**  
Landscaping business

**Other Significant Matters:**

Additional Pending Enforcement Actions: None  
Past-Due Penalties: None  
Past-Due Fees: None  
Other: None

Interested Third-Parties: The complainant has not expressed a desire to protest this action or speak at Agenda.

**Texas Register Publication Date:** January 21, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$250  
**Amount Deferred for Expedited Settlement:** N/A  
**Amount Deferred for Financial Inability to Pay:** N/A  
**Total Paid to General Revenue:** \$0  
**Total Due to General Revenue:** \$250  
**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – N/A  
Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** November 2, 2009  
**Complaint Information:** One complaint was received, alleging that Respondent advertised "irrigation installs or repair work" on [austin.craigslist.org](http://austin.craigslist.org) and did not include a licensed irrigator number in the advertisement.  
**Date(s) of Investigation:** November 2, 2009  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** May 26, 2010

***Violation Information***

Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required [30 TEX. ADMIN. CODE § 30.5(b) and TEX. WATER CODE § 37.003.].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent ceased advertising irrigation system services as of April 30, 2010.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** November 8, 2010  
**Date(s) Green Card(s) Signed:** Unclaimed  
**Date(s) Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
Preliminary hearing: N/A  
Evidentiary hearing: N/A

***Contact Information***

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

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Gena Hawkins, Air Enforcement Section, (512) 239- 2583

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

**Respondent:** Juan Kozer, Owner, Kozer & Associates, LLC, 108 Scarlet Oaks Cove, Dale, Texas 78616

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	1-Jun-2010	<b>Screening</b>	4-Jun-2010	<b>EPA Due</b>	
	<b>PCW</b>	12-Oct-2010				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Juan Kozer dba Kozer & Associates, LLC				
<b>Reg. Ent. Ref. No.</b>	RN105934962				
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	39857	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2010-0958-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>	Gena Hawkins	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500
			<b>EC's Team</b>	Enforcement Team 4

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$250
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
<b>Notes</b>	No adjustment due to compliance history.		
<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>
<b>Notes</b>	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	\$1	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$25		

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

<b>Notes</b>	
	<b>Final Penalty Amount</b>
	\$250

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

<b>Notes</b>	Deferral not offered for non-expedited settlement.		
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<b>PAYABLE PENALTY</b>	\$250
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**Screening Date** 4-Jun-2010

**Docket No.** 2010-0958-LII-E

**PCW**

**Respondent** Juan Kozer dba Kozer & Associates, LLC

*Policy Revision 2 (September 2002)*

**Case ID No.** 39857

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105934962

**Media [Statute]** Irrigators

**Enf. Coordinator** Gena Hawkins

### Compliance History Worksheet

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

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

*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 4-Jun-2010

Docket No. 2010-0958-LII-E

PCW

Respondent Juan Kozer dba Kozer & Associates, LLC

Policy Revision 2 (September 2002)

Case ID No. 39857

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105934962

Media [Statute] Irrigators

Enf. Coordinator Gena Hawkins

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 himself to the public as a person who can perform services for which a license or registration is required, as documented during a record review on November 2, 2009. Specifically, the Respondent advertised irrigation services on Austin Craigslist 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 1

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One event is recommended for one advertisement.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$250

This violation Final Assessed Penalty (adjusted for limits) \$250

# Economic Benefit Worksheet

**Respondent** Juan Kozler dba Kozler & Associates, LLC  
**Case ID No.** 39857  
**Req. Ent. Reference No.** RN105934962  
**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)	\$25	2-Nov-2009	30-Apr-2010	0.49	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to remove advertisements. Date Required is the date of the record review. Final Date is the 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

\$25

**TOTAL**

\$1

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603676503 KOZER, JUAN Classification: Rating:  
Regulated Entity: RN105934962 KOZER JUAN Classification: Site Rating:  
ID Number(s):  
Location: 108 SCARLETT OAKS COVE, DALE, TX, 78616  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: June 04, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 04, 2005 to June 04, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Gena Hawkins Phone: (512) 239 - 2583

## Site Compliance History Components

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

## Components (Multimedia) for the Site :

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
JUAN KOZER D/B/A KOZER &  
ASSOCIATES, LLC;  
RN105934962**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER**

**DOCKET NO. 2010-0958-LII-E**

At its \_\_\_\_\_ agenda meeting, 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. The respondent made the subject of this Order is Juan Kozer d/b/a Kozer & Associates, LLC ("Respondent").

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

**FINDINGS OF FACT**

1. Respondent owns and operates a landscaping business from his personal residence located at 108 Scarlet Oaks Cove in Dale, Caldwell County, Texas (the "Business"). Respondent sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems. 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 November 2, 2009, a TCEQ Central Office investigator documented that Respondent failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required. Specifically, Respondent advertised irrigation services on Austin Craigslist without a valid irrigator license.
3. Respondent received notice of the violation on or about May 31, 2010.
4. The Executive Director recognizes that, as of April 30, 2010, Respondent ceased advertising irrigation system services.
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 Juan Kozer d/b/a Kozer & Associates, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on November 8, 2010.

6. By letter dated November 8, 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.
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, 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 person who can perform services for which a license or registration is required, in violation of 30 TEX. ADMIN. CODE § 30.5(b) and TEX. WATER CODE § 37.003.
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 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.
6. An administrative penalty in the amount of two hundred fifty dollars (\$250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of two hundred fifty dollars (\$250.00) 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: Juan Kozer d/b/a Kozer & Associates, LLC; Docket No. 2010-0958-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. All relief not expressly granted in this Order is denied.
4. 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.
5. 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.
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 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.
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 Respondent if the Executive Director determines that Respondent 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.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF SHARESASA Y. ALEXANDER**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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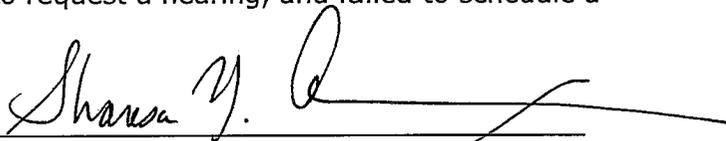
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"My name is Sharesa Y. Alexander. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 Juan Kozer d/b/a Kozer & Associates, LLC," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 8, 2010.

The EDPRP was mailed to Respondent's last known address on November 8, 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).

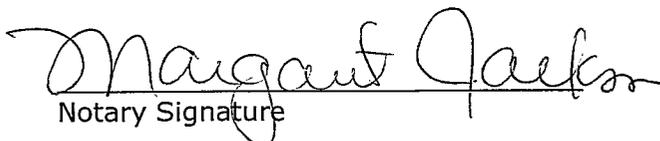
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Sharesa Y. Alexander, Staff 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 December A.D. 2010.



Notary Signature

