

Norberto Paita
RN107714115
Docket No. 2015-0399-LII-E

Order Type:

Default Order

Media:

LII

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

11820 Tobler Trail, Austin, Travis County;
2605 Mobile Street, Round Rock, Williamson County

Type of Operation:

landscaping irrigation services

Other Significant Matters:

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

Texas Register Publication Date: October 23, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$952

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$952

Compliance History Classifications:

Person/CN – N/A
Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Norberto Paita
RN107714115
Docket No. 2015-0399-LII-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: August 25, 2014
Date(s) of NOV(s): N/A
Date(s) of NOE(s): January 9, 2015

Violation Information

Failed to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, and/or servicing an irrigation system, in violation of TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(a).

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Immediately, cease selling, designing, installing, altering, repairing, or servicing irrigation systems until properly licensed.
2. Within 15 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: August 26, 2015
Date Green Card(s) Signed: August 27, 2015
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Ian Groetsch, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Rajesh Acharya, Enforcement Division, (512) 239-0577

TCEQ Regional Contact: Carolyn Runyon, Austin Regional Office, (512) 339-2929

Respondent Contact: Norberto Paita, 2605 Mobile Street, Round Rock, Texas 78681

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	9-Mar-2015	Screening	12-Mar-2015	EPA Due	
	PCW	29-Jun-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	Norberto Paita
Reg. Ent. Ref. No.	RN107714115
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	50235	Order Type	1660
Docket No.	2015-0399-LII-E	Government/Non-Profit	No
Media Program(s)	Irrigators	Enf. Coordinator	Rajesh Acharya
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$750
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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.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment due to compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$202
Estimated Cost of Compliance	\$186

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	26.9%	Adjustment	\$202
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Reduces or enhances the Final Subtotal by the indicated percentage.

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

Final Penalty Amount	\$952
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$952
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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	\$952
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Screening Date 12-Mar-2015

Docket No. 2015-0399-LII-E

PCW

Respondent Norberto Paita

Policy Revision 4 (April 2014)

Case ID No. 50235

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107714115

Media [Statute] Irrigators

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("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 judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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 Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 0%

Screening Date 12-Mar-2015
Respondent Norberto Paita
Case ID No. 50235
Reg. Ent. Reference No. RN107714115
Media [Statute] Irrigators
Enf. Coordinator Rajesh Acharya

Docket No. 2015-0399-LII-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 30.5(a), Tex. Water Code § 37.003, and Tex. Occ. Code § 1903.251

Violation Description

Failed to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system. Specifically, the Respondent did not hold an irrigator license prior to providing an irrigation services contract for an irrigation system located at 11820 Tobler Trail, Austin, Travis County, Texas.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 1

363 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$750

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark w th x)

Notes

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

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$202

Violation Final Penalty Total \$952

This violation Final Assessed Penalty (adjusted for limits) \$952

Economic Benefit Worksheet

Respondent Norberto Paita
Case ID No. 50235
Reg. Ent. Reference No. RN107714115
Media Violation No. Irrigators
 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$186	14-Mar-2014	9-Jan-2015	1.74	\$16	\$186	\$202
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for obtaining an irrigator license. Date Required is the date the irrigation service contract was prepared. Final Date is the record review date.

Approx. Cost of Compliance \$186

TOTAL \$202

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN604670760, RN107714115, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604670760, Norberto Paita

Classification: NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN107714115, PAITA NORBERTO

Classification: NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A

Repeat Violator: N/A

CH Group: 14 - Other

Location: 2605 MOBILE STREET, ROUND ROCK, TX 78681-7325, WILLIAMSON COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): WASTEWATER LICENSING NON LICENSED ID NUMBER R11107714115

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: March 17, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 17, 2010 to March 17, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Rajesh Acharya

Phone: (512) 239-0577

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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
NORBERTO PAITA;
RN107714115**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-0399-LII-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Norberto Paita ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a business located at 2605 Mobile Street in Round Rock, Williamson County, Texas (the "Business") and sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems, for which Respondent is required to be licensed under TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903. 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 August 25, 2014, an investigator documented that Respondent failed to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system. Specifically, Respondent did not hold an irrigator license prior to providing an irrigation services contract for an irrigation system located at 11820 Tobler Trail in Austin, Travis County, Texas.
3. 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 Norberto Paita" (the "EDPRP") in the TCEQ Chief Clerk's office on August 26, 2015.
4. By letter dated August 26, 2015, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on August 27, 2015.
5. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

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 TCEQ.

2. As evidenced by Finding of Fact No. 2, Respondent failed to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system, in violation of TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN CODE § 30.5(a).
3. As evidenced by Findings of Fact Nos. 3 and 4, 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(b)(1).
4. As evidenced by Finding of Fact No. 5, 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 TCEQ'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 nine hundred fifty-two dollars (\$952.00) 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 nine hundred fifty-two dollars (\$952.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The 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 TCEQ and shall be sent with the notation "Re: Norberto Paita; Docket No. 2015-0399-LII-E" to:

Financial Administration Division, Revenue Operations 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, cease selling, designing, installing, altering, repairing, or servicing irrigation systems until properly licensed, in accordance with 30 TEX. ADMIN. CODE ch. 30.
 - b. Within 15 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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."

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

FOSD Water Program, Team Leader
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. 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. 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.
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 fully executed 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

Date

AFFIDAVIT OF IAN GROETSCH

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

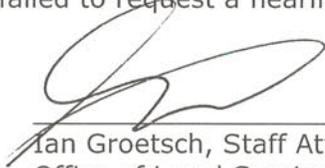
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"My name is Ian Groetsch. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 Norberto Paita" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 26, 2015.

The EDPRP was mailed to Respondent's last known address on August 26, 2015, via certified mail, return receipt requested, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on August 27, 2015.

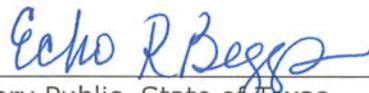
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.



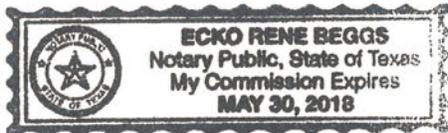
Ian Groetsch, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Subscribed and sworn to before me on this 30th day of September, A.D. 2015.



Notary Public, State of Texas



Notary without Bond