

David Lamar Gray
RN108740960
Docket No. 2015-1735-LII-E

Order Type:

Default Order

Media:

LII

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

6725 Lucas Lane, North Richland Hills, Tarrant County

Type of Operation:

landscape business

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: January 25, 2019

Comments Received: None

Penalty Information

Total Penalty Assessed: \$262

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$262

Compliance History Classifications:

Person/CN – N/A
Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

David Lamar Gray
RN108740960
Docket No. 2015-1735-LII-E

Investigation Information

Complaint Date(s): August 20, 2015
Complaint Information: Complainant alleged that Respondent was advertising irrigation work without displaying a license number.

Date(s) of Investigation: September 1, 2015 and November 9, 2015

Date(s) of NOV(s): September 14, 2015

Date(s) of NOE(s): November 10, 2015

Violation Information

Advertised or represented to the public that he can perform services for which a license or registration is required without holding a current license or registration, or without employing an individual who holds a current license [TEX. WATER CODE § 37.003 and 30 TEX. ADMIN. CODE § 30.5(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately cease advertising irrigation system services until properly licensed or until employment of a licensed irrigator.
2. Within 15 days, submit written certification to demonstrate compliance with Technical Requirement No. 1.

Litigation Information

Date Petition(s) Filed: October 2, 2018

Date Green Card(s) Signed: October 4, 2018

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Clayton Smith, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Litigation Division Agenda Coordinator: Janice Hernandez, (512) 239-2575

TCEQ Enforcement Coordinator: Johnnie Wu, Enforcement Division, (512) 239-2524

TCEQ Regional Contact: Kristi Mills-Jurach, Program Support Section, (512) 239-1261

Respondent Contact: David Lamar Gray, 6725 Lucas Lane, North Richland Hills, Texas 76182

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	16-Nov-2015	Screening	20-Nov-2015	EPA Due	
	PCW	4-Mar-2016				

RESPONDENT/FACILITY INFORMATION	
Respondent	David Lamar Gray
Reg. Ent. Ref. No.	RN108740960
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	51555	No. of Violations	1
Docket No.	2015-1735-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
		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	\$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.

Compliance History	5.0% Adjustment	Subtotals 2, 3, & 7	\$12
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Notes	Enhancement for one NOV with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$1	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$25	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$262
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$262
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$262
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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.
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PAYABLE PENALTY	\$262
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Screening Date 20-Nov-2015

Docket No. 2015-1735-LII-E

PCW

Respondent David Lamar Gray

Policy Revision 4 (April 2014)

Case ID No. 51555

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN108740960

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>)	1	5%
	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) 5%

>> 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

Enhancement for one NOV with same/similar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 20-Nov-2015
Respondent David Lamar Gray
Case ID No. 51555
Reg. Ent. Reference No. RN108740960
Media [Statute] Irrigators
Enf. Coordinator Rajesh Acharya

Docket No. 2015-1735-LII-E

PCW

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

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
<input type="text" value="100% of the rule requirement was not met."/>					

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent David Lamar Gray
Case ID No. 51555
Reg. Ent. Reference No. RN108740960
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	1-Sep-2015	9-Jun-2016	0.77	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to cease advertising irrigation system services until properly licensed or until employment of a licensed irrigator. Date Required is the date of the initial record review. 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

\$25

TOTAL

\$1

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.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN604918300, RN108740960, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN604918300, David Lamar Gray **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN108740960, DAVID LAMAR GRAY **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 6725 LUCAS LN NORTH RICHLAND HILLS, TX 76182-3953, TARRANT COUNTY

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

WASTEWATER LICENSING NON LICENSED ID NUMBER
R11108740960

Compliance History Period: September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

Date Compliance History Report Prepared: November 19, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 19, 2010 to November 19, 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.

1 Date: 09/14/2015 (1275671)
Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 344, SubChapter G 344.70(b)

Description: A Licensed Irrigator's (LI) number must be displayed on all forms of written and electronic advertisements for irrigation services.

Specifically, Mr. David Gray did not display a licensed irrigators name and license number on his website advertisement.

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
DAVID LAMAR GRAY;
RN108740960**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-1735-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 David Lamar Gray ("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 6725 Lucas Lane in North Richland Hills, Tarrant County, Texas 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 record reviews conducted on September 1, 2015, and November 9, 2015, an investigator documented that Respondent advertised or represented to the public that he can perform services for which a license or registration is required without holding a current license or registration, or without employing an individual who holds a current license. Specifically, Respondent did not hold an irrigator license when he advertised irrigation services on Facebook.
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 David Lamar Gray" (the "EDPRP") in the TCEQ Chief Clerk's office on October 2, 2018.
4. By letter dated October 2, 2018, 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 the return receipt "green card," Respondent received notice of the EDPRP on October 4, 2018, as evidenced by the signature on the card.

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 advertised or represented to the public that he can perform services for which a license or registration is required without holding a current license or registration, or without employing an individual who holds a current license, in violation of TEX. WATER CODE § 37.003 and 30 TEX. ADMIN. CODE § 30.5(b).
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 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 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: David Lamar Gray; Docket No. 2015-1735-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 advertising irrigation system services until properly licensed or until employment of a licensed irrigator, 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:

Program Support Section Manager
Office of Compliance and Enforcement, 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.

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. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. 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.
11. 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 CLAYTON SMITH

STATE OF TEXAS

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§
§

COUNTY OF TRAVIS

"My name is Clayton Smith. 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 David Lamar Gray" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 2, 2018.

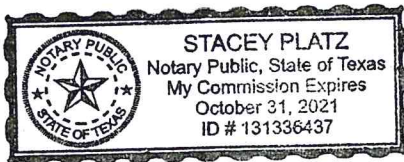
The EDPRP was mailed to Respondent's last known address on October 2, 2018, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on October 4, 2018, as evidenced by the signature on the card.

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."

Clayton Smith, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Clayton Smith, 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 21st day of December, A.D. 2018.



NOTARY WITHOUT BOND

Notary Public, State of Texas