

Adrian Gutierrez
RN106903909
Docket No. 2021-0903-LII-E

Order Type:
Agreed Order

Media:
LII

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
9807 Oriole Drive, Austin, Travis County (the “Business”)

San Marcos, Hays County:

105 Emerald Garden Road; 109 Strawberry Street; 108 Tulip Garden Trail; 132 Beautyberry Road
 132 Emerald Garden Road; 124 Strawberry Street; 116 Tulip Garden Trail
 136 Emerald Garden Road; 129 Strawberry Street
 165 Emerald Garden Road; 137 Strawberry Street
 173 Emerald Garden Road

Type of Operation:
landscape irrigation 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: May 19, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$11,400

Total Paid to General Revenue: \$340

Total Due to General Revenue: \$11,060

Payment Plan: 35 payments of \$316 each

Compliance History Classifications:

Person/CN - Unclassified
 Site/RN - N/A

Major Source: Minor

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): October 22, 2019

Complaint Information: On October 22, 2019, the Texas Commission on Environmental Quality (TCEQ) Landscape Irrigation Program received a complaint alleging that a licensed irrigator installed irrigation systems without permits.

Date(s) of Investigation: November 20, 2019; September 25, 2020

Date(s) of NOV(s): N/A

Date(s) of NOE(s): June 16, 2021

Adrian Gutierrez
RN106903909
Docket No. 2021-0903-LII-E

Violation Information

1. Failed to obtain all permits and inspections required to install an irrigation system [30 TEX. ADMIN. CODE § 344.35(d)(2)].
2. Failed to prepare an irrigation plan that shows that the irrigation system provides complete coverage of all areas to be irrigated [30 TEX. ADMIN. CODE § 344.61(b)].
3. Failed to design the irrigation system so that no components are used in a way which exceeds the manufacturer's published performance limitations for the component [30 TEX. ADMIN. CODE § 344.62(a)].
4. Failed to ensure the backflow prevention device is tested prior to being placed in service and provide the test results to the local water purveyor within ten business days of testing the backflow prevention assembly [30 TEX. ADMIN. CODE § 344.52(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days:
 - a. Implement measures and/or procedures to ensure that all permits and inspections required for the installation or repair of an irrigation system are obtained;
 - b. Implement measures and/or procedures designed to ensure backflow prevention devices are tested prior to being put into service and the test results are provided to the local water purveyor within ten business days of testing the backflow prevention assembly; and
 - c. Test the backflow prevention devices installed at 132 Beautyberry Road, 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 137 Emerald Garden Road, 165 Emerald Garden Road, and 173 Emerald Garden Road in San Marcos, Hays County, Texas.
2. Within 45 days submit written certification to demonstrate compliance with Technical Requirement Nos. 1.a through 1.c.
3. Within 90 days obtain permits for the irrigation systems installed at 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 108 Tulip Garden Trail, 116 Tulip Garden Trail, 132 Beautyberry Road, 137 Strawberry Street, 124 Strawberry Street, and 109 Strawberry Street in San Marcos, Hays County, Texas.
4. Within 105 days submit written certification to demonstrate compliance with Technical Requirement No. 3.
5. Within 180 days:
 - a. Prepare irrigation plans that show the irrigation systems provide complete coverage of all areas to be irrigated for the irrigation systems at 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 132 Beautyberry Road, and 129 Strawberry Street in San Marcos, Hays County, Texas; and
 - b. Re-design the irrigation system located at 132 Beautyberry Road, San Marcos, Hays County, Texas so that no components are used in a way which exceeds the manufacturer's published performance limitations for the component.
6. Within 195 days submit written certification to demonstrate compliance with Technical Requirement Nos. 5.a. and 5.b.

Adrian Gutierrez
RN106903909
Docket No. 2021-0903-LII-E

Litigation Information

Date Petition(s) Filed: November, 14 2022
Date(s) of Service: November 21, 2022
Settlement Date: April 21, 2023

Contact Information

TCEQ Attorneys: Cynthia Sirois, Litigation Division, (512) 239-3400
Sheldon Wayne, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575
TCEQ Enforcement Coordinator: Corinna Willis, Enforcement Division, (512) 239-2504
TCEQ Regional Contact: Shawn Stewart, Austin Regional Office, (512) 239-2929
Respondent Contact: Adrian Gutierrez, 9807 Oriole Drive, Austin, Texas 78735
Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision September 1, 2019

DATES	Assigned	21-Jun-2021	Screening	30-Jun-2021	EPA Due	
	PCW	12-Jul-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Adrian Gutierrez
Reg. Ent. Ref. No.	RN106903909
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61023	No. of Violations	4
Docket No.	2021-0903-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Julianne Matthews
		EC's Team	Enforcement Team 8
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,400
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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% Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for 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: \$1,404
 Estimated Cost of Compliance: \$11,915
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,400
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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:

Final Penalty Amount	\$11,400
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,400
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$11,400
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Screening Date 30-Jun-2021

Docket No. 2021-0903-LII-E

PCW

Respondent Adrian Gutierrez

Policy Revision 4 (April 2014)

Case ID No. 61023

PCW Revision September 1, 2019

Reg. Ent. Reference No. RN106903909

Media Irrigators

Enf. Coordinator Julianne Matthews

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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%
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)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for 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 30-Jun-2021

Docket No. 2021-0903-LII-E

PCW

Respondent Adrian Gutierrez

Policy Revision 4 (April 2014)

Case ID No. 61023

PCW Revision September 1, 2019

Reg. Ent. Reference No. RN106903909

Media Irrigators

Enf. Coordinator Julianne Matthews

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 344.35(d)(2)

Violation Description Failed to obtain all permits and inspections required to install an irrigation system. Specifically, the Respondent failed to obtain permits from the City of San Marcos prior to installing irrigation systems at 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 108 Tulip Garden Trail, 116 Tulip Garden Trail, 132 Beautyberry Road, 137 Strawberry Street, 124 Strawberry Street, and 109 Strawberry Street in San Marcos, Hays County, Texas.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (5.0%).

Matrix Notes 100% of the rule requirements were not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 10 Number of violation days 699

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$2,500

Ten single events are recommended, one for each system.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$110

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Adrian Gutierrez
Case ID No. 61023
Reg. Ent. Reference No. RN106903909
Media Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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	\$115	25-Sep-2020	17-Sep-2022	1.98	\$11	n/a	\$11
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$1,000	25-Sep-2020	16-Sep-2022	1.98	\$99	n/a	\$99
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The Training/Sampling delayed cost includes the estimated amount to implement measures and/or procedures to ensure that all permits required for the installation or repair of an irrigation system are obtained, calculated from the record review date to the estimated date of compliance.

The Permit delayed cost includes the estimated amount to obtain permits for the irrigation systems installed at 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 108 Tulip Garden Trail, 116 Tulip Garden Trail, 132 Beautyberry Road, 137 Strawberry Street, 124 Strawberry Street, and 109 Strawberry Street in San Marcos, Hays County, Texas (\$100 per system x ten systems), calculated from the record review date to the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,115

TOTAL \$110

Screening Date 30-Jun-2021
Respondent Adrian Gutierrez
Case ID No. 61023
Reg. Ent. Reference No. RN106903909
Media Irrigators
Enf. Coordinator Julianne Matthews

Docket No. 2021-0903-LII-E

PCW

*Policy Revision 4 (April 2014)
 PCW Revision September 1, 2019*

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 344.61(b)

Violation Description

Failed to prepare an irrigation plan that shows that the irrigation system provides complete coverage of all areas to be irrigated. Specifically, the Respondent prepared irrigation plans for irrigation systems at 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 132 Beautyberry Road, and 129 Strawberry Street in San Marcos, Hays County, Texas that did not provide complete coverage of all areas to be irrigated.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

Greater than 70% of the rule requirements were not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 5

699 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

Five single events are recommended, one for each system.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	

Notes

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$833

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent Adrian Gutierrez
Case ID No. 61023
Reg. Ent. Reference No. RN106903909
Media Irrigators
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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)	\$7,500	25-Sep-2020	15-Dec-2022	2.22	\$833	n/a	\$833

Notes for DELAYED costs

The delayed cost includes the estimated amount to prepare irrigation plans that show that the irrigation system provides complete coverage of all areas to be irrigated for the irrigation systems at 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 132 Beautyberry Road, and 129 Strawberry Street in San Marcos, Hays County, Texas (\$1,500 per system x five systems), calculated from the record review date to the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$7,500

TOTAL \$833

Screening Date 30-Jun-2021
Respondent Adrian Gutierrez
Case ID No. 61023
Reg. Ent. Reference No. RN106903909
Media Irrigators
Enf. Coordinator Julianne Matthews

Docket No. 2021-0903-LII-E

PCW

Policy Revision 4 (April 2014)
PCW Revision September 1, 2019

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 344.62(a)

Violation Description

Failed to design the irrigation system so that no components are used in a way which exceeds the manufacturer's published performance limitations for the component. Specifically, the irrigation plan for 132 Beautyberry Road, San Marcos, Hays County, Texas included a total design pressure in one zone that exceeded the static pressure from the water source.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

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

One single event is recommended.

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"/>

Notes

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

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 Adrian Gutierrez
Case ID No. 61023
Reg. Ent. Reference No. RN106903909
Media Irrigators
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction	\$2,500	25-Sep-2020	15-Dec-2022	2.22	\$19	\$370	\$389
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

The Engineering/Construction delayed cost includes the estimated amount to re-design the irrigation system located at 132 Beautyberry Road, San Marcos, Hays County, Texas so that no components are used in a way which exceeds the manufacturer's published performance limitations for the component, calculated from the record review date to the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,500

TOTAL \$389

Screening Date 30-Jun-2021
Respondent Adrian Gutierrez
Case ID No. 61023
Reg. Ent. Reference No. RN106903909
Media Irrigators
Enf. Coordinator Julianne Matthews

Docket No. 2021-0903-LII-E

PCW

Policy Revision 4 (April 2014)
PCW Revision September 1, 2019

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 344.52(c)

Violation Description

Failed to ensure the backflow prevention device is tested prior to being placed in service and provide the test results to the local water purveyor within ten business days of testing the backflow prevention assembly. Specifically, the Respondent did not ensure that backflow prevention test report results were provided to the City of San Marcos for the irrigation systems installed at 132 Beautyberry Road, 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 137 Emerald Garden Road, 165 Emerald Garden Road, and 173 Emerald Garden Road in San Marcos, Hays 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

Failure to ensure the backflow prevention device is tested prior to being placed in service could expose people to contaminants which would exceed levels protective of human health.

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 10

278 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Ten monthly events are recommended, calculated from the September 25, 2020 record review date to the June 30, 2021 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes

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

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$72

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

Economic Benefit Worksheet

Respondent Adrian Gutierrez
Case ID No. 61023
Reg. Ent. Reference No. RN106903909
Media Irrigators
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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	\$100	25-Sep-2020	18-Jul-2022	1.81	\$9	n/a	\$9
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$700	25-Sep-2020	18-Jul-2022	1.81	\$63	n/a	\$63

Notes for DELAYED costs

The Training/Sampling delayed cost includes the estimated amount to implement measures and/or procedures designed to ensure backflow prevention devices are tested prior to being put into service, calculated from the record review date to the estimated date of compliance.

The Other (as needed) delayed cost includes the estimated amount to test the backflow prevention devices installed at 132 Beautyberry Road, 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 137 Emerald Garden Road, 165 Emerald Garden Road, and 173 Emerald Garden Road in San Marcos, Hays County, Texas (\$100 per device x seven devices), calculated from the record review date to the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$800

TOTAL \$72

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

Compliance History Report for CN604378828, RN106903909, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN604378828, GUTIERREZ, ADRIAN **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN106903909, GUTIERREZ, ADRIAN **Classification:** NOT APPLICABLE **Rating:** N/A

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

CH Group: 14 - Other

Location: 9807 ORIOLE DRIVE, AUSTIN, TRAVIS COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):
LANDSCAPE IRRIGATION LICENSING LICENSE LI0020981

Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

Date Compliance History Report Prepared: October 22, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 22, 2016 to October 22, 2021

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

Name: Julianne Matthews **Phone:** (817) 588-5861

Site and Owner/Operator History:

- 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

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN ENFORCEMENT
ACTION CONCERNING
ADRIAN GUTIERREZ;
RN106903909

§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2021-0903-LII-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Adrian Gutierrez ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCC. CODE ch. 1903. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent together stipulate that:

1. Respondent owns and operates a landscape irrigation business located at 9807 Oriole Drive in Austin, Travis County, Texas (the "Business"). Respondent holds TCEQ Irrigator License No. LI0020981 and 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. Respondent installed landscape irrigation systems at different locations in Hays County, Texas, as specified below in Allegation Paragraph Nos. 1.a. through 1.d.
2. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of eleven thousand four hundred dollars (\$11,400.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred forty dollars (\$340.00) of the penalty. The remaining amount of eleven thousand sixty dollars (\$11,060.00) shall be paid in thirty-five (35) monthly payments of three hundred sixteen dollars (\$316.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order.
5. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Order.
7. This Order represents the complete and fully integrated agreement of the parties. 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.
8. This Order shall terminate five years from its effective date or upon full compliance with all the terms and conditions set forth in this Order, whichever is later.

II. ALLEGATIONS

1. During an investigation conducted on November 20, 2019, and a record review conducted on September 25, 2020, an investigator documented that Respondent:
 - a. Failed to obtain all permits and inspections required to install an irrigation system, in violation of 30 TEX. ADMIN. CODE § 344.35(d)(2). Specifically, Respondent failed to obtain permits from the City of San Marcos prior to installing irrigation systems at 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 108 Tulip Garden Trail, 116 Tulip Garden Trail, 132 Beautyberry Road, 137 Strawberry Street, 124 Strawberry Street, and 109 Strawberry Street in San Marcos, Hays County, Texas;
 - b. Failed to prepare an irrigation plan that shows that the irrigation system provides complete coverage of all areas to be irrigated, in violation of 30 TEX. ADMIN. CODE § 344.61(b). Specifically, Respondent prepared irrigation plans for irrigation systems at 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 132 Beautyberry Road, and 129 Strawberry Street in San Marcos, Hays County, Texas, that did not provide complete coverage of all areas to be irrigated;
 - c. Failed to design the irrigation system so that no components are used in a way which exceeds the manufacturer’s published performance limitations for the component, in violation of 30 TEX. ADMIN. CODE § 344.62(a). Specifically, the irrigation plan for 132 Beautyberry Road, San Marcos, Hays County, Texas included a total design pressure in one zone that exceeded the static pressure from the water source; and
 - d. Failed to ensure the backflow prevention device is tested prior to being placed in service and provide the test results to the local water purveyor within ten business days of testing the backflow prevention assembly, in violation of 30 TEX. ADMIN. CODE § 344.52(c). Specifically, Respondent did not ensure that backflow prevention test report results were provided to the City of San Marcos for the irrigation systems installed at 132 Beautyberry Road, 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 137 Emerald Garden Road, 165 Emerald Garden Road, and 173 Emerald Garden Road in San Marcos, Hays County, Texas.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondent’s compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which

are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: Adrian Gutierrez, Docket No. 2021-0903-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

2. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order:
 - i. Implement measures and/or procedures to ensure that all permits and inspections required for the installation or repair of an irrigation system are obtained, in accordance with 30 TEX. ADMIN. CODE § 344.35;
 - ii. Implement measures and/or procedures designed to ensure backflow prevention devices are tested prior to being put into service and the test results are provided to the local water purveyor within ten business days of testing the backflow prevention assembly, in accordance with 30 TEX. ADMIN. CODE § 344.52; and
 - iii. Test the backflow prevention devices installed at 132 Beautyberry Road, 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 137 Emerald Garden Road, 165 Emerald Garden Road, and 173 Emerald Garden Road in San Marcos, Hays County, Texas, in accordance with 30 TEX. ADMIN. CODE § 344.52.
 - b. Within 45 days after the effective date of this Order, submit written certification as described below in Ordering Provision No. 2.g., to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.iii.
 - c. Within 90 days after the effective date of this Order, obtain permits for the irrigation systems installed at 105 Emerald Garden Road, 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 108 Tulip Garden Trail, 116 Tulip Garden Trail, 132 Beautyberry Road, 137 Strawberry Street, 124 Strawberry Street, and 109 Strawberry Street in San Marcos, Hays County, Texas, in accordance with 30 TEX. ADMIN. CODE § 344.35.
 - d. Within 105 days after the effective date of this Order, submit written certification as described below in Ordering Provision No. 2.g., to demonstrate compliance with Ordering Provision No. 2.c.
 - e. Within 180 days after the effective date of this Order:
 - i. Prepare irrigation plans that show the irrigation systems provide complete coverage of all areas to be irrigated for the irrigation systems at 132 Emerald Garden Road, 136 Emerald Garden Road, 173 Emerald Garden Road, 132 Beautyberry Road, and 129 Strawberry Street in San Marcos, Hays County, Texas, in accordance with 30 TEX. ADMIN. CODE § 344.61; and
 - ii. Re-design the irrigation system located at 132 Beautyberry Road, San Marcos, Hays County, Texas, so that no components are used in a way which exceeds the manufacturer's published performance limitations for the component, in accordance with 30 TEX. ADMIN. CODE § 344.62.
 - f. Within 195 days after the effective date of this Order, submit written certification as described below in Ordering Provision No. 2.g., to demonstrate compliance with Ordering Provision Nos. 2.e.i. and 2.e.ii.

- g. The certifications required by these Ordering Provisions 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 fines and imprisonment for knowing violations."

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

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

and:

Program Support Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. 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 Enforcement Division at the address listed above.
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. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or

issued for any purpose for which an original signature could be used. The term “signature” shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

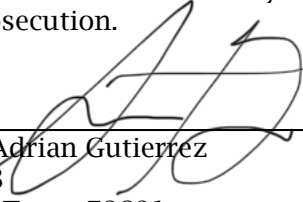
5/26/23
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Adrian Gutierrez
P.O. Box 888
Pflugerville, Texas 78691

04/21/2023
Date

If mailing address has changed, please check this box, and provide the new address below:
