

## **TCEQ Interoffice Memorandum**

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**To:** Mary Smith, General Counsel  
Dinniah Tadema, Assistant General Counsel

**Thru:** *JSR* Jess Robinson, Senior Attorney  
Litigation Division

**From:** *CS* Cynthia Sirois, Staff Attorney  
Litigation Division

**Date:** April 5, 2023

**Subject:** **Request for Remand**  
**April 12, 2023 Commission Agenda**  
Item No. 10 - Adrian Gutierrez  
Docket No. 2021-0903-LII-E

The Executive Director respectfully requests that the above-referenced item be remanded to the Executive Director. Respondent contacted the Litigation Division on Monday, April 3, and asked to discuss the case and settlement options. On Wednesday, April 5, Respondent requested an Agreed Order with a payment plan.

Respondent Contact:

Adrian Gutierrez  
P.O. Box 888  
Pflugerville, Texas 78691  
Phone: 512-393-9318

Respondent has been notified of this Request for Remand. Please do not hesitate to call me at (512) 239-3392 if you have any questions regarding this matter.

cc: Corinna Willis, Enforcement Division  
Shawn Stewart, Austin Regional Office  
Sheldon Wayne, Office of Public Interest Counsel  
Michael Parrish, Enforcement Division  
Leslie Gann, Enforcement Division  
Stuart Beckley, Enforcement Division  
Dinniah Tadema, Office of the General Counsel  
Gill Valls, Office of the General Counsel

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

**Order Type:**  
Default Order

**Media:**  
LII

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
9807 Oriole Drive, in 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:** February 10, 2023

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$11,400

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$11,400

**Compliance History Classifications:**  
Person/CN - Unclassified  
Site/RN - Not Applicable

**Major Source:** Minor

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** April 2014

**Investigation Information**

**Complaint Date(s):** October 22, 2019  
**Complaint Information:** 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. 2.
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 of Service:** November 21, 2022  
**Date Answer(s) Filed:** N/A

**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

<b>DATES</b>	<b>Assigned</b>	21-Jun-2021	<b>Screening</b>	30-Jun-2021	<b>EPA Due</b>	
	<b>PCW</b>	12-Jul-2021				

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

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

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$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.

<b>Compliance History</b>	0.0% Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No adjustment for Compliance History.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$1,404  
 Estimated Cost of Compliance: \$11,915  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$11,400
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

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

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$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

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirements were not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 10

699 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

Ten 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 \$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**

**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**

**>> 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"/>

**Percent**

**>> Programmatic Matrix**

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

**Percent**

Matrix Notes

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

**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 checked="" type="text" value="x"/>

**Violation Base Penalty**

Five single events are recommended, one for each system.

**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 checked="" 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.** 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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

## 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			Percent
	Major	Moderate	Minor	
Actual				15.0%
Potential	x			

**>> 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
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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	\$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**

## **DEFAULT ORDER**

**DOCKET NO. 2021-0903-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 Adrian Gutierrez (“Respondent”).

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

### **FINDINGS OF FACT**

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 Findings of Fact Nos. 2.a. through 2.d.
2. 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. 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. 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. 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. 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.

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 Adrian Gutierrez” (the “EDPRP”) in the TCEQ Chief Clerk’s office on November 14, 2022.
4. By letter dated November 14, 2022, 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 November 21, 2022.
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.a., Respondent failed to obtain all permits and inspections required to install an irrigation system, in violation of 30 TEX. ADMIN. CODE § 344.35(d)(2).
3. As evidenced by Finding of Fact No. 2.b., Respondent 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).
4. As evidenced by Finding of Fact No. 2.c., Respondent 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).
5. As evidenced by Finding of Fact No. 2.d., Respondent 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).
6. 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).
7. 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.
8. 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.
9. An administrative penalty in the amount of eleven thousand four hundred dollars (\$11,400.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

10. 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 eleven thousand four hundred dollars (\$11,400.00) 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: 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
3. 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. 3.g., to demonstrate compliance with Ordering Provision Nos. 3.a.i. through 3.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. 3.g., to demonstrate compliance with Ordering Provision No. 3.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. 3.g., to demonstrate compliance with Ordering Provision Nos. 3.e.i. and 3.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

- 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 Site 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 Enforcement Division 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

\_\_\_\_\_  
Date

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## UNSWORN DECLARATION OF CYNTHIA K. SIROIS

“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 Adrian Gutierrez’ (the ‘EDPRP’) was filed in the TCEQ Chief Clerk’s office on November 14, 2022.

The EDPRP was mailed to Respondent’s last known address on November 14, 2022, via certified mail, return receipt requested, postage prepaid. According to USPS.com ‘Track & Confirm’ delivery confirmation records, Respondent received notice of the EDPRP on November 21, 2022.

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.”

"My name is Cynthia K. Sirois, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.”

Executed in Travis County,  
State of Texas,  
on the 27 day of December, 2022

*Cynthia K Sirois*

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Declarant