

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61382
Andrew William Nelson dba Drew's Drip Irrigation and Horticulture Services
RN110818796
Docket No. 2021-1255-LII-E

Order Type:
Default Order

Media:
Irrigators

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
17114 Fawn Crossing Drive, San Antonio, Bexar County (the "Business")

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: September 16, 2022

Comments Received: None

Penalty Information

Total Penalty Assessed: \$944

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$944

Compliance History Classifications:

Person/CN - not applicable

Site/RN - not applicable

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: August 6, 2021

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

Date(s) of NOE(s): September 15, 2021

Violation Information

Failed to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, servicing, or providing consulting services relating to an irrigation system, or connecting an irrigation system to any water supply [TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(a).].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

None

1. Immediately upon the effective date of this Order, cease selling, designing, consulting, installing, altering, repairing, or servicing irrigation systems until properly licensed or until employment of a licensed irrigator.
2. Within 15 days after the effective date of this Order, submit written certification to demonstrate compliance with Technical Requirement No. 1.

Litigation Information

Date Petition(s) Filed: June 14, 2022

Date Green Card(s) Signed: June 16, 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: Amanda Conner, Enforcement Division, (512) 239-0855

TCEQ Regional Contact: Cameron Lopez, San Antonio Regional Office, (210) 490-3096

Respondent Contact: Andrew William Nelson, 17114 Fawn Crossing Drive, San Antonio, Texas 78248

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	20-Sep-2021	Screening	21-Sep-2021	EPA Due	
	PCW	7-Jun-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	Andrew William Nelson dba Drew's Drip Irrigation and Horticulture Services
Reg. Ent. Ref. No.	RN110818796
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61382	No. of Violations	1
Docket No.	2021-1255-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Amanda Conner
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% 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: \$194
 Estimated Cost of Compliance: \$186
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	25.9% Adjustment	\$194
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with Violation No. 1.

Final Penalty Amount	\$944
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$944
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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	\$944
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Screening Date 21-Sep-2021

Docket No. 2021-1255-LII-E

PCW

Respondent Case ID No.
Andrew William Nelson dba Drew's Drip Irrigation and Horticulture Services
61382

Policy Revision 5 (January 28, 2021)
PCW Revision February 11, 2021

Reg. Ent. Reference No. RN110818796

Media Irrigators

Enf. Coordinator Amanda Conner

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)

N/A

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 21-Sep-2021 **Docket No.** 2021-1255-LII-E **PCW**
Respondent Andrew William Nelson dba Drew's Drip Irrigation and Horticulture
Case ID No. 61382 *Policy Revision 5 (January 28, 2021)*
Reg. Ent. Reference No. RN110818796 *PCW Revision February 11, 2021*
Media Irrigators
Enf. Coordinator Amanda Conner

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 30.5(a), Tex. Water Code § 37.003, and Tex. Occ. Code § 1903.251
Violation Description Failed to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, servicing, or providing consulting services relating to an irrigation system, or connecting an irrigation system to any water supply. Specifically, on October 23, 2020, Respondent designed and sold an irrigation system at 2103 Wordsworth Drive in Austin, Travis County, Texas, without the proper license.

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

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 1 333 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$750

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$194 **Violation Final Penalty Total** \$944

This violation Final Assessed Penalty (adjusted for limits) \$944

Economic Benefit Worksheet

Respondent Andrew William Nelson dba Drew's Drip Irrigation and Horticulture Services
Case ID No. 61382
Reg. Ent. Reference No. RN110818796
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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs							

Avoided Costs

ANNUALIZE 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	\$186	23-Oct-2020	21-Sep-2021	0.91	\$8	\$186	\$194
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs							
The avoided cost includes the estimated amount to obtain an irrigator license, calculated from the sale date of the irrigation system to the screening date.							

Approx. Cost of Compliance	\$186	TOTAL	\$194
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Compliance History Report

Compliance History Report for CN605681436, RN110818796, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN605681436, NELSON, ANDREW WILLIAM **Classification:** NOT APPLICABLE **Rating:** N/A
Regulated Entity: RN110818796, NELSON, ANDREW WILLIAM **Classification:** NOT APPLICABLE **Rating:** N/A
Complexity Points: N/A **Repeat Violator:** N/A
CH Group: 14 - Other
Location: 17114 FAWN CROSSING DRIVE IN SAN ANTONIO, BEXAR COUNTY, TEXAS
TCEQ Region: REGION 13 - SAN ANTONIO
ID Number(s): LANDSCAPE IRRIGATION LICENSING LICENSE IT0006781
Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021
Date Compliance History Report Prepared: December 14, 2021
Agency Decision Requiring Compliance History: Enforcement
Component Period Selected: December 14, 2016 to December 14, 2021
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Aaron Vincent **Phone:** (512) 239-0855

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

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
ANDREW WILLIAM NELSON
DBA DREW'S DRIP IRRIGATION
AND HORTICULTURE SERVICES;
RN110818796**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2021-1255-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 Andrew William Nelson dba Drew's Drip Irrigation and Horticulture Services ("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 17114 Fawn Crossing Drive in San Antonio, Bexar County, Texas (the "Business") and sells, designs, offers consultations regarding installs, maintains, alters, repairs, and/or services landscape irrigation systems, for which Respondent is required to be licensed under TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903.
2. During a record review conducted on August 6, 2021, an investigator documented that Respondent failed to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, servicing, or providing consulting services relating to an irrigation system, or connecting an irrigation system to any water supply. Specifically, on October 23, 2020, Respondent designed and sold an irrigation system at 2103 Wordsworth Drive in Austin, Travis County, Texas, without the proper license.
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 Andrew William Nelson dba Drew's Drip Irrigation and Horticulture Services" (the "EDPRP") in the TCEQ Chief Clerk's office on June 14, 2022.
4. By letter dated June 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 the return receipt "green card," Respondent received notice of the EDPRP on June 16, 2022, 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 failed to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, servicing, or providing consulting services relating to an irrigation system, or connecting an irrigation system to any water supply, in violation of TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(a).
3. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
4. As evidenced by Finding of Fact No. 5, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of nine hundred forty-four dollars (\$944.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of nine hundred forty-four dollars (\$944.00) 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: Andrew William Nelson dba Drew's Drip Irrigation and Horticulture Services; Docket No. 2021-1255-LII-E" to:

Financial Administration Division
Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, cease selling, designing, consulting, installing, altering, repairing, or servicing irrigation systems until properly licensed or until employment of a licensed irrigator, in accordance with 30 TEX. ADMIN. CODE § 30.5.
 - b. Within 15 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a.

The certification 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:

Enforcement Division, MC 149A
Texas Commission on Environmental Quality
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. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the 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 Andrew William Nelson dba Drew’s Drip Irrigation and Horticulture Services’ (the “EDPRP”) was filed in the TCEQ Chief Clerk’s office on June 14, 2022.

The EDPRP was mailed to Respondent’s last known address on June 14, 2022, via certified mail, return receipt requested, postage prepaid. According to the return receipt ‘green card,’ Respondent received notice of the EDPRP on June 16, 2022, 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.”

"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 9th day of August, 2022

Cynthia K Sirois

Declarant