

Executive Summary – Enforcement Matter – Case No. 39856
Cary Cantu d/b/a Cary's Lawn & Landscaping
RN105390538
Docket No. 2010-0957-LII-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

LII

Small Business:

Yes

Location Where Violation Occurred:

316 Quail Ridge Drive, Nacogdoches, Nacogdoches County

Type of Operation:

Landscaping business

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: None

Interested Third-Parties: The complainant has not indicated a desire to protest this action or speak at Agenda.

Texas Register Publication Date: March 4, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$262

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$262

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – N/A

Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 39856
Cary Cantu d/b/a Cary's Lawn & Landscaping
RN105390538
Docket No. 2010-0957-LII-E

Investigation Information

Complaint Date(s): December 11, 2009
Complaint Information: Complainant alleged Respondent was advertising irrigation services without a license.
Date(s) of Investigation: May 7, 2010
Date(s) of NOV(s): N/A
Date(s) of NOE(s): June 4, 2010

Violation Information

Failed to refrain from advertising or representing himself to the public as a person who can perform a service for which a license is required [30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(d) and TEX. WATER CODE § 37.003].

Corrective Actions/Technical Requirements

Corrective Action Completed:

Respondent received an irrigator license (No. LI0018803) on December 20, 2010, thus, the Technical Requirements contained in the order are moot.

Technical Requirements:

1. Immediately cease advertising irrigation system services until properly licensed.
2. Within 15 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: December 3, 2010
Date Green Card Signed: Unclaimed
Date Answer Filed: N/A
SOAH Referral Date: N/A
Hearing Date:
Preliminary hearing: N/A
Evidentiary hearing: N/A

Contact Information

TCEQ Attorneys: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Ms. Heather Podlipny, Air Enforcement Section, (512) 239-2603

TCEQ Regional Contact: Mr. Ronald Hebert, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondent: Mr. Cary Cantu, 316 Quail Ridge Drive, Nacogdoches, Texas 75961

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATE Assigned	7-Jun-2010		
PCW	4-Nov-2010	Screening	9-Jun-2010
		EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Cary Cantu dba Cary's Lawn & Landscaping		
Reg. Ent. Ref. No.	RN105390538		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	39856	No. of Violations	1
Docket No.	2010-0957-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Podlipny
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$12
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Notes	The penalty was enhanced due to one similar NOV.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$6	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$111	

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

Notes	
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Final Penalty Amount	\$262
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$262
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DEFERRAL	0.0%	Reduct on	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$262
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Screening Date 9-Jun-2010

Docket No. 2010-0957-LII-E

PCW

Respondent Cary Cantu dba Cary's Lawn & Landscaping

Policy Revision 2 (September 2002)

Case ID No. 39856

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105390538

Media [Statute] Irrigators

Enf. Coordinator Heather Podlipny

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty was enhanced due to one similar NOV.

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

Screening Date 9-Jun-2010 **Docket No.** 2010-0957-LII-E **PCW**
Respondent Cary Cantu dba Cary's Lawn & Landscaping *Policy Revision 2 (September 2002)*
Case ID No. 39856 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105390538
Media [Statute] Irrigators
Enf. Coordinator Heather Podlipny

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(b), 344.30(d), and Tex. Water Code § 37.003
Violation Description Failed to refrain from advertising or representing himself to the public as a person who can perform a service for which a license is required, as documented during a record review investigation conducted on May 7, 2010. Specifically, the Respondent advertised irrigation services on a web-based search engine, LocalSearch.com, and is not a licensed irrigator.

Base Penalty \$2,500

>> **Environmental, Property and Human Health Matrix**

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				
				0%	

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		x			
100% of the rule requirement was not met.					

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 190 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$250

One event is recommended based on documentation of the violation during a record review investigation conducted on May 7, 2010.

Good Faith Efforts to Comply 0.0% Reduction \$0

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$250

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

Estimated EB Amount \$6 **Violation Final Penalty Total** \$262

This violation Final Assessed Penalty (adjusted for limits) \$262

Economic Benefit Worksheet

Respondent Cary Cantu dba Cary's Lawn & Landscaping
Case ID No. 39856
Req. Ent. Reference No. RN105390538
Media Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$111	1-Dec-2009	11-Dec-2010	1.03	\$6	n/a	\$6
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to obtain an irrigator license. The Date Required is the date the violation was first documented and the Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$111

TOTAL

\$6

Compliance History Report

Customer/Respondent/Owner-Operator: CN603280769 CANTU, CARY Classification: Rating:
Regulated Entity: RN105390538 CANTU CARY Classification: Site Rating:

ID Number(s):

Location: 316 QUAIL RIDGE DR, NACOGDOCHES, TX, 75961

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: June 08, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 08, 2005 to June 08, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Heather Podlipny Phone: 239 - 2603

Site Compliance History Components

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
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
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.)
Date: 01/15/2008 (614347)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 30, SubChapter A 30.5(b)
Description: A person may not advertise or represent themselves to the public as a holder of a license or registration unless they possess a current license or registration. A person may not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current license or registration, or unless it employs individuals who hold current licenses.
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CARY CANTU DBA CARY'S
LAWN & LANDSCAPING;
RN105390538**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0957-LII-E

At its _____ agenda meeting, 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 Cary Cantu d/b/a Cary's Lawn & Landscaping ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a landscaping business located at 316 Quail Ridge Drive in Nacogdoches, Nacogdoches County, Texas (the "Business"). Respondent 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.
2. During a record review conducted on May 7, 2010, a TCEQ Central Office investigator documented that Respondent failed to refrain from advertising or representing himself to the public as a person who can perform a service for which a license is required. Specifically, Respondent advertised irrigation services on a web-based search engine, LocalSearch.com, and is not a licensed irrigator.
3. Respondent received notice of the violation on or about June 9, 2010.
4. 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 Cary Cantu d/b/a Cary's Lawn & Landscaping" (the "EDPRP") in the TCEQ Chief Clerk's office on December 3, 2010.
5. By letter dated December 3, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

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 Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to refrain from advertising or representing himself to the public as a person who can perform a service for which a license is required, in violation of 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(d) and TEX. WATER CODE § 37.003.
3. As evidenced by Findings of Fact Nos. 4 and 5, 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(c)(2).
4. As evidenced by Finding of Fact No. 6, 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 the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two hundred sixty-two dollars (\$262.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of two hundred sixty-two dollars (\$262.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here.

2. The administrative 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 "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Cary Cantu d/b/a Cary's Lawn & Landscaping; Docket No. 2010-0957-LII-E" to:

Financial Administration Division, Revenues 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, Respondent shall cease advertising irrigation system services until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 30; and
 - b. Within 15 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Tracy Miller, Landscape Irrigation Program, MC 174
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.

5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
6. 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. 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.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RUDY CALDERON

STATE OF TEXAS

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COUNTY OF TRAVIS

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cary Cantu d/b/a Cary's Lawn & Landscaping," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 3, 2010.

The EDPRP was mailed to Respondent's last known address on December 3, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

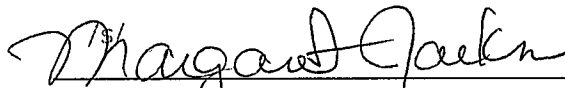
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Rudy Calderon, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 9th day of February A.D. 2011.


Notary Signature