

## EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2002-0695-LII-E TCEQ ID NOS.: 5376 AND RN103457198 CASE NO.: 6052

RESPONDENT NAME: ROBERT (BOBBY) BARTON MCCANS, JR. DBA AARON IRRIGATION AND LANDSCAPING CO.

### ORDER TYPE:

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

### CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY		

**SITE WHERE VIOLATION(S) OCCURRED:** 7621 Ford Drive, North Richland Hills, Tarrant County, Texas; 816 Oak Court, Saginaw, Tarrant County, Texas; 1017 Grand Central Parkway, Saginaw, Tarrant County, Texas; 5301 Westhaven Road, Fort Worth, Tarrant County, Texas; and 200 Woodale Street, Euless, Tarrant County, Texas

**TYPE OF OPERATION:** Landscape irrigation systems

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on February 12, 2007. No comments were received.

### CONTACTS AND MAILING LIST:

**TCEQ Attorney:** Mr. Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Ms. Pam Campbell, Enforcement Division, Section I, MC 169, (512) 239-4493

**TCEQ Regional Contact:** Ms. Carolyn Lind, Tyler Regional Office, MC R-5, (903) 535-5145

**Respondent:** Mr. Robert (Bobby) B. McCans Jr., Owner, Aaron Irrigation and Landscaping Co., 220 Worthy Street, Saginaw, Texas 76179

**Respondent's Attorney:** Not represented by counsel.

**RESPONDENT'S NAME: ROBERT (BOBBY) BARTON MCCANS, JR. DBA AARON IRRIGATION AND  
LANDSCAPING CO.  
DOCKET NO.: 2002-0695-LII-E**

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date(s) of Investigation(s) Relating to this Case:</b> December 12, 2001, January 4, 2002, January 14, 2002, and April 18, 2002</p> <p><b>Date(s) of NOV(s)/NOE(s) Relating to this Case:</b> January 25, 2002 and August 7, 2002 (NOEs)</p> <p><b>Background Facts:</b> The EDP RP in this case was filed on February 23, 2004. The Respondent could not be served with the EDP RP. The First Amended Report and Petition (EDFARP) was filed on June 25, 2004. The EDFARP was served on the Respondent on June 28, 2004. The Second Amended Report and Petition (EDSARP) was filed on February 23, 2006. The Respondent could not be served with the EDSARP. The Third Amended Report and Petition (EDTARP) was filed on September 27, 2006. The Respondent was served with the EDTARP on September 28, 2006. The Respondent failed to file an answer to the EDP RP, EDFARP, EDSARP, and EDTARP hence this default.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>LII:</b></p> <p>Installed landscape irrigation systems at 7621 Ford Drive, North Richland Hills, Tarrant County, Texas; 816 Oak Court, Saginaw, Texas; 1017 Grand Central Parkway, Saginaw, Tarrant County, Texas; 5301 Westhaven Road, Fort Worth, Tarrant County, Texas; and 200 Woodale Street, Euless, Tarrant County, Texas, without a valid license [30 TEX. ADMIN. CODE §§ 30.5(a) and (b), 30.125, and 344.4(a); and TEX. WATER CODE §§ 34.007(a) and 34.009. TEX. WATER CODE §§ 34.007(a) and 34.009 were recodified, effective September 1, 2003, and can now be found at TEX. WATER CODE §37.003, and TEX. OCC. CODE § 1903.251; and TEX. WATER CODE § 37.006 respectively].</p>	<p><b>Total Assessed:</b> \$3,125</p> <p><b>Total Deferred:</b> \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$3,125</p> <p>This is a Default Order, the Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification:</b> N/A</p> <p><b>Person Compliance History Classification:</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action(s) Taken</b></p> <p>The Respondent shall:</p> <p>1) Immediately cease unauthorized installation of landscape irrigation systems and all other activities for which an irrigator or installer license is required as described in 30 TEX. ADMIN. CODE § 344.4, and 30.111 until proper training is completed and a TCEQ license is obtained</p> <p>2) Within 30 days, submit written certification stating that respondent is no longer selling, designing, installing, maintaining, altering, repairing or servicing irrigation systems, providing consulting services for irrigation systems or connecting irrigation systems to any water supply or submit certification that a new and current valid TCEQ irrigator license has been issued</p>



Policy Revision 2 (09/02)

# Penalty Calculation Worksheet (PCW)

PCW Revision 6/12/2003

<b>DATES</b>		PCW 7-Oct-2004	Screening 4-Apr-2002	Priority Due 2-Aug-2002	EPA Due
<b>RESPONDENT INFORMATION</b>					
Respondent	Robert (Bobby) Barton McCans, Jr. dba Aaron Irrigation & Landscaping Co.				
Respondent/Site ID No(s)	RN103457198				
Facility/Site Region	4 - Dallas/Fort Worth	Major/Minor Source		Minor	
<b>CASE INFORMATION</b>					
Enf./Case ID No(s)	6052		No. Violations		1
Docket No.	2002-0695-LII-E		Order Type		Findings
Case Priority	3		EC's Team		Enforcement Team 5
Enf. Coordinator	J. Mac Vilas, P.G.				
Media Program(s)	Irrigators				
Admin. Penalty \$ Limit	Minimum \$0	Maximum \$2,500			

## Penalty Calculation Section

<b>TOTAL BASE PENALTY</b> (Sum of violation base penalties)		<b>Subtotal 1</b>	\$3,125
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
<b>Compliance History</b>	0% Enhancement	<b>Subtotals 2, 3 &amp; 7</b>	\$0
Notes	No adjustment due to compliance history.		+
<b>Culpability</b>	0% Enhancement	<b>Subtotal 4</b>	\$0
Notes	No <input type="checkbox"/> Select Yes/No The Respondent does not meet the culpability criteria.		+
<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
Notes	The respondent has not achieved compliance yet.		+
<b>Economic Benefit</b>	0% Enhancement*	<b>Subtotal 6</b>	\$0
	\$59 Total EB Amounts	*Capped at the Total EB \$ Amount	
	\$475 Approx. Cost of Compliance	=	
<b>SUM OF SUBTOTALS 1-7</b>		<b>Final Subtotal</b>	\$3,125
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$0
Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)			
Notes			=
		<b>Final Penalty Amount</b>	\$3,125
<b>STATUTORY LIMIT ADJUSTMENT</b>		<b>Final Assessed Penalty</b>	\$3,125
<b>DEFERRAL</b>		<b>Adjustment</b>	\$0
Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)			
Notes	No deferral is recommended because this is not an expedited case.		=
<b>PAYABLE PENALTY</b>		<b>\$3,125</b>	

<b>Screening Date</b>	4-Apr-2002	<b>Docket Number</b>	2002-0695-LII-E	<b>PCW</b>
<b>Respondent</b>	Robert (Bobby) Barton McCans, Jr. dba Aaron Irrigation & Landscaping Co.	<b>Policy Revision 2 (09/02)</b>		
<b>Case ID No.</b>	6052	<b>PCW Revision 6/12/2003</b>		
<b>Respondent/Site ID No.</b>	RN103457198			
<b>Media [Statute]</b>	Irrigators			
<b>Enf. Coordinator</b>	J. Mac Vilas, P.G.			
<b>Site Address</b>	6013 Greenfield Road, Ft. Worth, Texas			

**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 <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 judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	n	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	n	0%
	Participation in a voluntary pollution reduction program	n	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	n	0%

**Adjustment Percentage (Subtotal 2)**

>> **Repeat Violator (Subtotal 3)**

Select Yes/No **Adjustment Percentage (Subtotal 3)**

>> **Compliance History Person Classification (Subtotal 7)**

Select High, Average or Poor **Adjustment Percentage (Subtotal 7)**

**Compliance History Summary**

**Compliance History Notes**

**Total Adjustment Percentage (Subtotals 2, 3 & 7)**

<b>Screening Date</b>	04-Apr-02	<b>Docket Number</b>	2002-0695-LII-E	<b>PCW</b>	
<b>Respondent</b>	Robert (Bobby) Barton McCans, Jr. dba Aaron Irrigation & Landscaping Co.	Revision 2 (09/02)			
<b>Case ID No.</b>	6052	PCW Revision 6/12/2003			
<b>Respondent/Site ID No.</b>	RN103457198				
<b>Media [Statute]</b>	Irrigators				
<b>Enf. Coordinator</b>	J. Mac Vilas, P.G.				
<b>Violation Number</b>	1				
<b>Primary Rule Cite</b>	30 Tex. Admin. Code §§ 30.5(a),(b) 30 TAC §344.4(a)				
<b>Secondary Cite(s)</b>	Texas Water Code § 34.007(a) (now Texas Water Code §37.003 and Texas Occupations Code § 1903.251) and Texas Water Code §34.009 (now Texas Water Code § 37.006) and 30 Tex. Admin. Code § 30.125				
<b>Violation Description</b>	<p>The respondent installed landscape irrigation systems without a valid license. The respondent's registration under license number 5376 was first issued in December 1995 and expired August 31, 2000. The respondent installed irrigation systems with an expired license in February 2001, July 2001 and September 2001, November 2001 and March 2002 at five different sites.</p>				
<b>Base Penalty</b>				\$2,500	
» <b>Environmental, Property and Human Health Matrix</b>					
<b>Harm</b>					
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	x	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
» <b>Programmatic Matrix</b>					
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
OR	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>
<b>Matrix Notes</b>	Installation of an irrigation system by a person not properly trained and licensed could result in improper installation that could contaminate the public drinking water supply.				
<b>Adjustment</b>				<input type="text" value="-1,875"/>	
<b>Base Penalty Subtotal</b>				\$625	
<b>Violation Events</b>					
<b>Number of Violation Events</b>		<input type="text" value="5"/>			
<i>mark only one; use small x</i>	<b>daily</b>	<input type="text"/>			
	<b>monthly</b>	<input type="text"/>			
	<b>quarterly</b>	<input type="text"/>			
	<b>semiannual</b>	<input type="text"/>			
	<b>annual</b>	<input type="text"/>			
	<b>single event</b>	x			
<b>Violation Base Penalty</b>				\$3,125	
<b>Events Notes</b>	Five single events are recommended based on the installation of irrigation systems by the respondent at five separate sites in Tarrant County (816 Oak Ct., Saginaw, 7621 Ford Dr, North Richland Hills, 1017 Grand Central Parkway, Saginaw, 5301 Westhaven Rd., Ft. Worth, and 200 Wooddale St., Euless).				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>			
<b>Estimated EB Amount (\$)</b>		<input type="text" value="\$59"/>			
<b>Violation Final Penalty total</b>				<input type="text" value="\$3,125"/>	
<b>This Violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$3,125"/>	

### Economic Benefit Worksheet

**Respondent** Robert (Bobby) Barton McCans, Jr. dba Aaron Irrigation & Landscaping Co.  
**ID Number(s)** 6052  
**Media [Statute]** Irrigators  
**Violation Number** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	---	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$475	31-Aug-2000	1-Mar-2003	2.5	\$59	n/a	\$59
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of the obtaining a new license (new training, and reexamination) since the respondent failed to renew the license within 90 days of expiration. Estimated costs include training (\$400) and examination fee (\$75) for a total item cost of \$475. Date required is the date of license expiration and final date is date the respondent took the irrigator license examination.

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx Cost of Compliance \$475

**TOTAL** \$59

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ROBERT (BOBBY) BARTON  
MCCANS, JR. DBA AARON  
IRRIGATION AND  
LANDSCAPING CO.,  
EXPIRED TCEQ IRRIGATOR  
LICENSE NO: 5376  
RN 103457198

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2002-0695-LII-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Third Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7, 34<sup>1</sup>, 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 Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Co. ("Mr. McCans").

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

**FINDINGS OF FACT**

1. Mr. McCans sells, designs, consults, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Mr. McCans' place of business is located at 1417 Broke Spoke Court, Fort Worth, Tarrant County, Texas.
2. Mr. McCans is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE chs. 7 and 37, and TEX. OCC. CODE ch. 1903.
3. During document reviews conducted on December 12, 2001, January 4, 2002, January 14, 2002, and April 18, 2002, a TCEQ Central Office Compliance Support Program Specialist documented that Mr. McCans installed landscape irrigation systems at 7621 Ford Drive, North Richland Hills, Tarrant County, Texas; 816 Oak Court, Saginaw, Tarrant County,

---

<sup>1</sup> TEX. WATER CODE ch. 34 was repealed effective September 1, 2003, and the provisions relevant in this case can now be found at TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903

Texas; 1017 Grand Central Parkway, Saginaw, Tarrant County, Texas; 5301 Westhaven Road, Fort Worth, Tarrant County, Texas; and 200 Woodale Street, Euless, Tarrant County, Texas, without a valid license. At the time of the installations, Mr. McCans' license had expired on August 31, 2000.

4. Mr. McCans received notices of the violation on or about January 30, 2002, and August 12, 2002.
5. 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 Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Company" (the "EDPRP") in the TCEQ Chief Clerk's office on February 23, 2004.
6. The Executive Director filed the "Executive Director's First Amended 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 Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Company" (the "EDFARP") in the TCEQ Chief Clerk's office on June 25, 2004.
7. By letter dated June 25, 2004, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. McCans with notice of the EDFARP. According to the return receipt "green card," Mr. McCans received notice of the EDFARP on June 28, 2004, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. McCans received notice of the EDFARP, provided by the Executive Director. Mr. McCans failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.
9. The Executive Director filed the "Executive Director's Second Amended 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 Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Company" (the "EDSARP") in the TCEQ Chief Clerk's office on February 23, 2006.
10. The Executive Director filed the "Executive Director's Third Amended 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 Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Co." (the "EDTARP") in the TCEQ Chief Clerk's office on September 27, 2006.

11. By letter dated September 27, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. McCans with notice of the EDTARP. According to the return receipt "green card," Mr. McCans received notice of the EDTARP on September 28, 2006, as evidenced by the signature on the card.
12. More than 20 days have elapsed since Mr. McCans received notice of the EDTARP, provided by the Executive Director. Mr. McCans failed to file an answer to the EDTARP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. McCans is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7, 34<sup>2</sup>, and 37, TEX. OCC. CODE ch. 1903 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. McCans installed landscape irrigation systems at 7621 Ford Drive, North Richland Hills, Tarrant County, Texas; 816 Oak Court, Saginaw, Texas; 1017 Grand Central Parkway, Saginaw, Tarrant County, Texas; 5301 Westhaven Road, Fort Worth, Tarrant County, Texas; and 200 Woodale Street, Euless, Tarrant County, Texas, without a valid license, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and (b), 30.125, and 344.4(a); and TEX. WATER CODE §§ 34.007(a)<sup>3</sup> and 34.009<sup>4</sup>.
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Mr. McCans with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Mr. McCans has failed to file a timely answer to the EDFARP, 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 Mr. McCans and assess the penalty recommended by the Executive Director.

---

<sup>2</sup> TEX. WATER CODE ch. 34 was repealed effective September 1, 2003, and the provisions relevant in this case can now be found at TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903.

<sup>3</sup> The provisions of TEX. WATER CODE § 34.007(a) were recodified effective September 1, 2003, and can now be found at TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251.

<sup>4</sup> The provisions of TEX. WATER CODE § 34.009 were recodified effective September 1, 2003, and can now be found at TEX. WATER CODE § 37.006.

5. As evidenced by Finding of Fact Nos. 10 and 11, the Executive Director has timely served Mr. McCans with proper notice of the EDTARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 12, Mr. McCans has failed to file a timely answer to the EDTARP, 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 Mr. McCans and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. McCans for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of three thousand one hundred twenty-five dollars (\$3,125.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. 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. Mr. McCans is assessed an administrative penalty in the amount of three thousand one hundred twenty-five dollars (\$3,125.00) for violations of TEX. WATER CODE ch. 37 and rules of the TCEQ. The payment of this administrative penalty and Mr. McCans' 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. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Co.; Docket No. 2002-0695-LII-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Mr. McCans shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, cease unauthorized installation of landscape irrigation systems and all other activities for which an irrigator or installer license is required as described in 30 TEX. ADMIN. CODE § 344.4, and 30.111 until proper training is completed and a TCEQ license is obtained in accordance with 30 TEX. ADMIN. CODE chs. 30, and 344, TEX. OCC. CODE ch. 1903, and TEX. WATER CODE ch. 37; and
  - b. Within 30 days after the effective date of this Order submit written certification stating that Mr. McCans is no longer selling, designing, installing, maintaining, altering, repairing or servicing irrigation systems, providing consulting services for irrigation systems or connecting irrigation systems to any water supply or submit certification that a new and current valid TCEQ irrigator license has been issued.

The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and 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 certification shall be submitted to:

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

with a copy to:

Regulatory Compliance, Compliance Support Division, MC 178  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. McCans. Mr. McCans is ordered to give notice of this Order to personnel who maintain day-to-day control over the operations referenced in this Order.
5. If Mr. McCans 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, Mr. McCans' failure to comply is not a violation of this Order. Mr. McCans shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. McCans shall notify the Executive Director within seven days after Mr. McCans becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Mr. McCans shall be made in writing to the Executive Director. Extensions are not effective until Mr. McCans receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Mr. McCans if the Executive Director determines that Mr. McCans has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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.

Robert (Bobby) Barton McCans, Jr. dba Aaron Irrigation and Landscaping Co.  
Docket No. 2002-0695-LII-E  
Page 7

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

For the Commission

**AFFIDAVIT OF ALFRED A. OLOKO**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Alfred A. Oloko. 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, I 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 Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Company” (the “EDPRP”) with the Office of the Chief Clerk on February 23, 2004.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended 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 Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Company” (the “EDFARP”) with the Office of the Chief Clerk on June 25, 2004.

I sent the EDFARP to Mr. McCans at his last known address on February June 25, 2004 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. McCans received notice of the EDFARP on June 28, 2004, as evidenced by the signature on the card.

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Second Amended 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 Robert (Bobby) B. McCans, Jr. dba Aaron Irrigation and Landscaping Company” (the “EDSARP”) with the Office of the Chief Clerk on February 23, 2006.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Third Amended 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 Robert (Bobby) B. McCans, Jr. dba Aaron

Irrigation and Landscaping Company" (the "EDTARP") with the Office of the Chief Clerk on September 27, 2006.

I sent the EDTARP to Mr. McCans at his last known address on February September 27, 2004 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. McCans received notice of the EDTARP on September 28, 2006, as evidenced by the signature on the card.

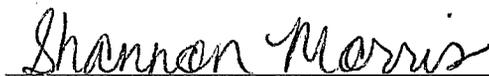
More than 20 days have elapsed since Mr. McCans received notice of the EDTARP. Mr. McCans failed to file an answer to the EDTARP, failed to request a hearing, and failed to schedule a settlement conference.



Alfred A. Oloko  
Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 18<sup>th</sup> day of December, A.D., 2006.

  
Notary Stamp