EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1955-LII-E **TCEQ ID:** RN105001903 **CASE NO.:** 31642

RESPONDENT NAME: Larry E. Hutton

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
X OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: 871 Shoal Point, League City, Galveston County

TYPE OF OPERATION: Landscaping business

SMALL BUSINESS: __X__ Yes ___ No

OTHER SIGNIFICANT MATTERS: A complaint was received on June 20, 2006 alleging the Respondent is operating without a license. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Libby Hogue, Enforcement Division, Enforcement Section II, MC 219, (512) 239-1165; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Central Office Investigator: Mr. Richard Allen, Compliance Support Division, Regulatory Compliance Section, MC 178, (512) 339-6956
Respondent: Mr. Larry E. Hutton, Owner, Perfect Edge Landscaping, 5434 Malmedy Road, Houston, Texas 77033
Respondent's Attorney: Not represented by counsel on this enforcement matter

Attachment: Site Compliance History

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __X Complaint ___ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint Relating to this Case:** June 20, 2006 **Date of Investigation Relating to this Case:** October 25, 2006 **Date of NOE Relating to this Case:** November 2, 2006 (NOE) **Background Facts:** This was a complaint investigation. One violation was documented. **WATER** Failed to possess a valid irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system [30 TEX. ADMIN. CODE §§ 344.4 and 30.5(a) and (b), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251].	**Total Assessed:** $625 **Total Deferred:** $125 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $500 **Site Compliance History Classification:** __High ___Avg. __Poor **Person Compliance History Classification:** __High __Avg. __Poor **Major Source:** ___ Yes __X__ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order, cease selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed; and b. Within 15 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision a.

Attachment: Site Compliance History

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	06-Nov-2006				
PCW	07-Nov-2006	Screening	07-Nov-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Larry E. Hutton		
Reg. Ent. Ref. No.	RN105001903		
Facility/Site Region	12-Houston	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	31642	No. of Violations	1
Docket No.	2006-1955-LII-E	Order Type	1660
Media Program(s)	Irrigators	Enf. Coordinator	Libby Hogue
Multi-Media		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* $625

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement *Subtotals 2, 3, & 7* $0

Notes: No enhancement due to no previous compliance history.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: Respondent does not meet culpability.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	*(mark with a small x)*

Notes: Respondent does not meet the good faith criteria.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$44
Approx. Cost of Compliance	$500

SUM OF SUBTOTALS 1-7 Final Subtotal $625

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $625

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $625

DEFERRAL 20% Reduction Adjustment -$125

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $500

Screening Date 07-Nov-2006 **Docket No.** 2006-1955-LII-E **PCW**
Respondent Larry E. Hutton *Policy Revision 2 (September 2002)*
Case ID No. 31642 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN105001903
Media [Statute] Irrigators
Enf. Coordinator Libby Hogue

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)*	0	0%
	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*	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%
		Please Enter Yes or No	
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)**

No

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 enhancement due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **0%**

Screening Date 07-Nov-2006 **Docket No.** 2006-1955-LII-E **PCW**

Respondent Larry E. Hutton *Policy Revision 2 (September 2002)*

Case ID No. 31642 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN105001903

Media [Statute] Irrigators

Enf. Coordinator Libby Hogue

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 344.4 and 30.5(a) and (b)

Secondary Rule Cite(s) Tex. Water Code § 37.003 and Tex. Occupations Code § 1903.251

Violation Description Failure to possess an irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system. Specifically, Mr. Hutton installed an irrigation (sprinkler) system at 871 Shoal Point, League City, Galveston County, Texas; without an irrigator license, as documented during a record review conducted on October 25, 2006.

Base Penalty $2,500

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

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 25%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Installing irrigation systems without a license could expose human health to pollutants which would exceed protective levels.

Adjustment -$1,875

Base Penalty Subtotal $625

Violation Events

Number of Violation Events 1

mark only one use a small x	
daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $625

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $44

Statutory Limit Test

Violation Final Penalty Total $625

This violation Final Assessed Penalty (adjusted for limits) $625

Economic Benefit Worksheet

Respondent Larry E. Hutton
Case ID No. 31642
Reg. Ent. Reference No. RN105001903
Media [Statute] Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs	$500	25-Jun-2005	25-Mar-2007	1.7	$44	n/a	$44
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to obtain a valid irrigation license, calculated from the date the irrigation system was installed at complainant address through the expected date of compliance.

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/equipment				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: $500

TOTAL $44

Compliance History

Customer/Respondent/Owner-Operator:	CN603064916	HUTTON, LARRY E.	Classification:	Rating:
Regulated Entity:	RN105001903	HUTTON, LARRY E.	Classification:	Site Rating:

ID Number(s):	LANDSCAPE IRRIGATION LICENSING	LICENSE: NONE
Location:	5434 MALMEDY ROAD, HOUSTON, TEXAS	

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: November 09, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 06, 2001 to November 06, 2006

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

Name: Libby Hogue Phone: 512-239-1165

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 of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership 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.)

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
LARRY E. HUTTON	§	
RN105001903	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1955-LII-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Larry E. Hutton ("Mr. Hutton") under the authority of TEX. OCCUPATIONS CODE ch. 1903 and TEX. WATER CODE chs. 7 and 37. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Hutton appear before the Commission and together stipulate that:

1. Mr. Hutton owns and operates a landscape business at 5434 Malmedy Road in Houston, Harris County, Texas. Mr. Hutton installed an irrigation system at 871 Shoal Point, League City, Galveston County, Texas (the "Site").

2. TCEQ has general authority to regulate the design and installation of landscape irrigation systems, and the licensing of landscape irrigators and installers, pursuant to TEX. OCCUPATIONS CODE ch. 1903.

3. The Commission and Mr. Hutton agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Hutton is subject to the Commission's jurisdiction.

4. Mr. Hutton received notice of the violations alleged in Section II ("Allegations") on or about November 7, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Hutton of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Six Hundred Twenty-Five Dollars ($625) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Hutton has paid Five Hundred Dollars ($500) of the administrative penalty and One Hundred Twenty-Five Dollars ($125) is deferred contingent upon Mr. Hutton's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the

terms of this Agreed Order. If Mr. Hutton fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Hutton to pay all or part of the deferred penalty.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and Mr. Hutton have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Hutton has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As a landscape irrigator, Mr. Hutton is alleged to have failed to possess a valid irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system, in violation of 30 TEX. ADMIN. CODE §§ 344.4 and 30.5(a) and (b), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251, as documented during a record review conducted on October 25, 2006.

III. DENIALS

Mr. Hutton generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Hutton pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Hutton's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Larry E. Hutton, Docket No. 2006-1955-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. It is further ordered that Mr. Hutton shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order, cease selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 344; and

   b. Within 15 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision 2.a. The certification shall 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:

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

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Hutton.

4. If Mr. Hutton fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other

catastrophe, Mr. Hutton's failure to comply is not a violation of this Agreed Order. Mr. Hutton shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hutton shall notify the Executive Director within seven days after Mr. Hutton becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Hutton shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hutton receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Hutton in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Hutton, or three days after the date on which the Commission mails notice of the Order to Mr. Hutton, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY Docum #

For the Commission

For the Executive Director

4/18/07
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

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

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

Signature

X 1-13-07
Date

X LARRY E HUTTON
Name (Printed or typed)
Authorized Representative of
Larry E. Hutton

X OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.