EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-2019-LII-E TCEQ ID: RN104222567 CASE NO.: 31777
RESPONDENT NAME: James L. Emmot

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	__WATERQUALITY		

SITE WHERE VIOLATION(S) OCCURRED: 15843 Drexel Run, San Antonio, Bexar County

TYPE OF OPERATION: Landscape irrigation business

SMALL BUSINESS: _X__Yes ___No

OTHER SIGNIFICANT MATTERS: A complaint was received on September 28, 2005, alleging the respondent did not fulfill any warranty work. 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 the desire to protect this action or speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 9, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Cari-Michel La Caille, Enforcement Division, Enforcement Section II, MC 219, (512) 239-1387; Mr. Steven Lopez, Enforcement Division, Enforcement Section I, (512) 239-1896
Respondent: Mr. James Emmot, Owner, 2727 West Woodlawn Avenue, San Antonio, Texas 78228
Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT'S NAME: James L. Emmot
DOCKET NO.: 2006-2019-LII-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_Complaint __Routine ___Enforcement Follow-up ___Record Review **Date of Complaint Relating to this Case:** September 28, 2005 **Date of Record Review Relating to this Case:** September 25, 2006 **Date of NOE Relating to this Case:** October 11, 2006 (NOE) **Background Facts:** This was a routine scheduled complaint investigation for compliance with the occupation certification program. One significant program violation was observed. **WATER** Failure to hold an irrigator license prior to advertising, selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system. Specifically, Mr. Emmot installed an irrigation system at the Site without an irrigator license. In addition, Mr. Emmot represented to the public that he could perform a service for which a license is required [30 TEX. ADMIN. CODE §§ 344.4 and 30.5(a) and (b), TEX. OCCUPATIONS CODE § 1903.251, and TEX. WATER CODE § 37.003].	**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 __Average __Poor **Person Compliance History Classification:** __High __Average __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.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 17, 2006*

TCEQ

DATES					
Assigned	13-Nov-2006				
PCW	27-Nov-2006	Screening	22-Nov-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	James L. Emmot		
Reg. Ent. Ref. No.	RN104222567		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31777	No. of Violations	1
Docket No.	2006-2019-LII-E	Order Type	1660
Media Program(s)	Irrigators	Enf. Coordinator	Cari-Michel La Caille
Multi-Media		EC's Team	EnforcementTeam 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: The Respondent has not had any enforcement actions within the last five years.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: Respondent does not meet the culpability criteria.

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

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

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* $0

Total EB Amounts	$18
Approx. Cost of Compliance	$500

**Capped at the Total EB $ Amount*

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 22-Nov-2006 **Docket No.** 2006-2019-LII-E **PCW**

Respondent James L. Emmot *Policy Revision 2 (September 2002)*

Case ID No. 31777 *PCW Revision November 17, 2006*

Reg. Ent. Reference No. RN104222567

Media [Statute] Irrigators

Enf. Coordinator Cari-Michel La Caille

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 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%

		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

The Respondent has not had any enforcement actions within the last five years.

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

Screening Date 22-Nov-2006 **Docket No.** 2006-2019-LII-E **PCW**

Respondent James L. Emmot

Policy Revision 2 (September 2002)

Case ID No. 31777

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN104222567

Media [Statute] Irrigators

Enf. Coordinator Cari-Michel La Caille

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 344.4 and 30.5(a) and (b) , Tex. Water Code § 37.003 and Tex. Occupations Code § 1903.251

Violation Description Failed to hold an irrigator license prior to advertising, selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system. Specifically, Mr. Emmot installed an irrigation system at 15843 Drexel Run, San Antonio, Bexar County without an irrigator license, as documented in a record review conducted on September 25, 2006. In addition, Mr. Emmot represented to the public that he could perform a service for which a license is required.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $1,875

$625

Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an 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 $18

Statutory Limit Test

Violation Final Penalty Total $625

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

Economic Benefit Worksheet

Respondent James L. Emmot
Case ID No. 31777
Reg. Ent. Reference No. RN104222567
Media Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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-Sep-2006	10-Jun-2007	0.7	$18	n/a	$18
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated amount required to obtain a valid irrigation license, calculated from the date of the complaint 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: $18

Compliance History

Customer/Respondent/Owner-Operator:	CN602603433	EMMOT, JAMES L	Classification:	Rating:
Regulated Entity:	RN104222567	EMMOT, JAMES L	Classification:	Site Rating:

ID Number(s):

Location: 2727 W WOODLAWN AVE, SAN ANTONIO,TX, 78228

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: November 20, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 20, 2001 to November 20, 2006

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

Name: Cari-Michel La Caille Phone: 512-239-1387

Site Compliance History Components

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 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**
JAMES L. EMMOT	§	
RN104222567	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-2019-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 James L. Emmot ("Mr. Emmot") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Emmot appear before the Commission and together stipulate that:

1. Mr. Emmot owns and operates a landscape irrigation business at 2727 West Woodlawn Avenue in San Antonio, Bexar County, Texas. Mr. Emmot installed an irrigation system at 15843 Drexel Run, San Antonio, Bexar 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. Emmot agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Emmot is subject to the Commission's jurisdiction.

4. Mr. Emmot received notice of the violations alleged in Section II ("Allegations") on or about October 16, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Emmot 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. Emmot has paid Five Hundred Dollars ($500) of the administrative penalty and One Hundred Twenty-Five Dollars ($125) is deferred contingent upon Mr. Emmot'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. Emmot fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Emmot 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. Emmot 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. Emmot 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 the irrigator at the Site, Mr. Emmot is alleged to have failed to hold an irrigator license prior to advertising, 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 September 25, 2006. Specifically, Mr. Emmot installed an irrigation system at the Site without an irrigator license. In addition, Mr. Emmot represented to the public that he could perform a service for which a license is required.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Emmot pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Emmot'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: James L. Emmot, Docket No. 2006-2019-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. Emmot 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. Emmot.

4. If Mr. Emmot 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. Emmot's failure to comply is not a violation of this Agreed Order. Mr. Emmot shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Emmot shall notify the Executive Director within seven days after Mr. Emmot

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. Emmot shall be made in writing to the Executive Director. Extensions are not effective until Mr. Emmot 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. Emmot 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. Emmot, or three days after the date on which the Commission mails notice of the Order to Mr. Emmot, 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

For the Commission

For the Executive Director

5/7/07
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

2-3-07
Date

James L. Emmot
Name (Printed or typed)
Authorized Representative of
James L. Emmot

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.