EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1991-LII-E **TCEQ ID:** RN103382958 **CASE NO.:** 31504

RESPONDENT NAME: Gregory D. Fox

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	X OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 4010 Chainhurst Drive, Richardson, Dallas County

TYPE OF OPERATION: Landscape irrigation

SMALL BUSINESS: X **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received on April 27, 2005, alleging that the Respondent did not obtain a final inspection for an irrigation system he installed. 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 19, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Michael Limos, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-5839; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Respondent: Mr. Gregory D. Fox, President, P.O. Box 227, Forney, Texas 75126
Respondent's Attorney: Not represented by counsel on this enforcement matter

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:** April 27, 2006 **Date of Investigation Relating to this Case:** September 12, 2006 **Date of NOE Relating to this Case:** September 28, 2006 (NOE) **Background Facts:** This was a complaint investigation. One violation was documented. **WATER** Failed to comply with reasonable inspection requirements, ordinances or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory. Specifically, Mr. Fox did not obtain the final inspection from the City of Richardson for the irrigation system installed at 4010 Chainhurst Drive in Richardson, Dallas County, Texas [30 TEX. ADMIN. CODE § 344.70].	**Total Assessed:** $275 **Total Deferred:** $55 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $220 **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. Within 30 days after the effective date of this Agreed Order, obtain the final inspection of the landscape irrigation system installed at 4010 Chainhurst Drive from the City of Richardson; and b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision November 15, 2006*

DATES					
Assigned	2-Oct-2006				
PCW	15-Nov-2006	Screening	20-Oct-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Gregory D. Fox		
Reg. Ent. Ref. No.	RN103382958		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31504	No. of Violations	1
Docket No.	2006-1991-LII-E	Order Type	1660
Media Program(s)	All Occupational Licenses	Enf. Coordinator	Michael Limos
Multi-Media		EC's Team	EnforcementTeam 8
Admin. Penalty $ Limit Minimum	$0	Maximum	$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$250**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — **10%** Enhancement — *Subtotals 2, 3, & 7* **$25**

Notes: Enhancement because the respondent received two NOVs for the same or similar violation at this site within the past five years.

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

Notes: The 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**

**Capped at the Total EB $ Amount*

Total EB Amounts	$7
Approx. Cost of Compliance	$200

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$275**

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 **$275**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$275**

DEFERRAL — **20%** Reduction — *Adjustment* **-$55**

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 **$220**

Screening Date 20-Oct-2006 **Docket No.** 2006-1991-LII-E **PCW**

Respondent Gregory D. Fox

Case ID No. 31504

Reg. Ent. Reference No. RN103382958

Media [Statute] All Occupational Licenses

Enf. Coordinator Michael Limos

Policy Revision 2 (September 2002)

PCW Revision November 15, 2006

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*)	2	10%
	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) 10%

>> 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

Enhancement because the respondent received two NOVs for the same or similar violation within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 20-Oct-2006 **Docket No.** 2006-1991-LII-E **PCW**

Respondent Gregory D. Fox *Policy Revision 2 (September 2002)*

Case ID No. 31504 *PCW Revision November 15, 2006*

Reg. Ent. Reference No. RN103382958

Media [Statute] All Occupational Licenses

Enf. Coordinator Michael Limos

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 344.70

Violation Description Failed to comply with reasonable inspection requirements, ordinances or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory, as documented during a record review conducted on September 12, 2006. Specifically, the respondent did not obtain the final inspection from the City of Richardson for the irrigation system installed at 4010 Chainhurst Drive in Richardson, Dallas County, Texas.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $2,250

$250

Violation Events

Number of Violation Events 1 | 38 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $250

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $7

Statutory Limit Test

Violation Final Penalty Total $275

This violation Final Assessed Penalty (adjusted for limits) $275

Economic Benefit Worksheet

Respondent Gregory D. Fox
Case ID No. 31504
Reg. Ent. Reference No. RN103382958
Media All Occupational Licenses
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	$200	12-Sep-2006	30-May-2007	0.7	$7	n/a	$7
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to obtain the required inspection from the City of Richardson calculated from the investigation date to the projected 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
				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance: $200

TOTAL: $7

Compliance History

Customer/Respondent/Owner-Operator:	CN601903149	FOX, GREGORY D	Classification:	Rating:
Regulated Entity:	RN103382958	FOX, GREGORY D	Classification:	Site Rating:
ID Number(s):	LANDSCAPE IRRIGATION LICENSING		LICENSE	LI0004342
Location:	P.O. BOX 227, FORNEY, TX 75126 KAUFMAN COUNTY			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	December 01, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 01, 2001 to December 01, 2006			

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

Name: Mike Limos Phone: 512.239.5839

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.)

Date: 06/15/2005 (378747)

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 344, SubChapter D 344.70

Description: Failure by a licensed irrigator to comply with reasonable inspection requirements, ordinances or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory.

Date: 08/14/2006 (489208)

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 344, SubChapter D 344.70

Description: Failure by a licensed irrigator to comply with reasonable inspection requirements, ordinance or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory.

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**
GREGORY D. FOX	§	
RN103382958	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1991-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 Gregory D. Fox ("Mr. Fox") 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. Fox appear before the Commission and together stipulate that:

1. Mr. Fox is a licensed irrigator who owns and operates a landscape irrigation business located at 10483 Buffalo Way in Forney, Kaufman County, and installed a landscape irrigation system located at 4010 Chainhurst Drive in Richardson, Dallas 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. Fox agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Fox is subject to the Commission's jurisdiction.

4. Mr. Fox received notice of the violations alleged in Section II ("Allegations") on or about October 3, 2006.

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

6. An administrative penalty in the amount of Two Hundred Seventy-Five Dollars ($275) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Fox has paid Two Hundred Twenty Dollars ($220) of the administrative penalty and Fifty-Five Dollars ($55) is deferred contingent upon Mr. Fox' 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. Fox fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Fox 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. Fox 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. Fox 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

Mr. Fox is alleged to have failed to comply with reasonable inspection requirements, ordinances or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory, in violation of 30 TEX. ADMIN. CODE § 344.70, as documented during a record review conducted on September 12, 2006. Specifically, Mr. Fox did not obtain the final inspection from the City of Richardson for the irrigation system installed at 4010 Chainhurst Drive in Richardson, Dallas County, Texas.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Fox pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Fox' 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: Gregory D. Fox, Docket No. 2006-1991-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. Fox shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, obtain the final inspection of the landscape irrigation system installed at 4010 Chainhurst Drive from the City of Richardson, in accordance with 30 TEX. ADMIN. CODE § 344.70; and

   b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 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 copies to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

and

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. Fox.

4. If Mr. Fox 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. Fox' failure to comply is not a violation of this Agreed Order. Mr. Fox shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Fox shall notify the Executive Director within seven days after Mr. Fox 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. Fox shall be made in writing to the Executive Director. Extensions are not effective until Mr. Fox 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. Fox 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. Fox, or three days after the date on which the Commission mails notice of the Order to Mr. Fox, 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 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 Date

_____ _____
Name (Printed or typed) Title
Authorized Representative of
Gregory D. Fox

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.