

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1973-LII-E **TCEQ ID:** RN105030894 **CASE NO.:** 31741
RESPONDENT NAME: Dave Fisk

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1709 Saint Albans Boulevard, 3305 Blue Jay Lane, and 708 Upson, Austin, Travis County</p> <p>TYPE OF OPERATION: Landscape care</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on July 13, 2006, alleging one of the sprinkler heads was bubbling and that a couple of heads along a fence were not operating correctly. There is no record of additional pending enforcement actions regarding these facility locations.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 30, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 1490, (512) 239-5806; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896 Respondent: Mr. David Fisk, P.O. Box 10282, Austin, Texas 78766-1282 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: July 13, 2006</p> <p>Date of Investigation Relating to this Case: September 11, 2006</p> <p>Date of NOE Relating to this Case: November 9, 2006 (NOE)</p> <p>Background Facts: This was a complaint investigation. One violation was documented.</p> <p>WATER</p> <p>Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system. Specifically, Mr. Fisk installed sprinkler systems at the Sites without an irrigator license [30 TEX. ADMIN CODE §§ 30.5(a) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251].</p>	<p>Total Assessed: \$1,875</p> <p>Total Deferred: \$375 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$100 (the remaining \$1,400 to be paid in 14 monthly payments of \$100 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>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</p> <p>b. Within 15 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.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

DATES	Assigned	13-Nov-2006	Screening	14-Nov-2006	EPA Due	
	PCW	6-Dec-2006				

RESPONDENT/FACILITY INFORMATION	
Respondent	Dave Fisk
Reg. Ent. Ref. No.	RN105030894
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	31741	No. of Violations	1
Docket No.	2006-1973-LII-E	Order Type	1660
Media Program(s)	Irrigators	Enf. Coordinator	J. Craig Fleming
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)	<i>Subtotal 1</i>	\$1,875
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	0% Enhancement	<i>Subtotals 2, 3, & 7</i> \$0

Notes: No change due to the Respondent's lack of compliance history.

Culpability	No	0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	<i>Subtotal 5</i>	\$0
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	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.

Total EB Amounts	\$18	0% Enhancement*	<i>Subtotal 6</i>	\$0
Approx. Cost of Compliance	\$500	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$1,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE		<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$1,875**

STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$1,875
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DEFERRAL	20% Reduction	<i>Adjustment</i>	-\$375
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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	\$1,500
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Screening Date: 14-Nov-2006

Docket No. 2006-1973-LII-E

PCW

Respondent: Dave Fisk

Policy Revision 2 (September 2002)

Case ID No. 31741

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN105030894

Media [Statute] Irrigators

Enf. Coordinator J. Craig Fleming

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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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 change due to the Respondent's lack of compliance history.

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

Screening Date 14-Nov-2006

Docket No. 2006-1973-LII-E

PCW

Respondent Dave Fisk

Policy Revision 2 (September 2002)

Case ID No. 31741

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN105030894

Media [Statute] Irrigators

Enf. Coordinator J. Craig Fleming

Violation Number 1

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

Violation Description

Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system. Specifically, the Respondent installed sprinkler systems at residences located at 1709 Saint Albans Boulevard on/or about June 26, 2006, 3305 Blue Jay Lane, and 708 Upton, Austin, Travis County, as documented during the record review conducted on September 11, 2006.

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 3

33 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	x	

Violation Base Penalty \$1,875

Three single events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$18

Violation Final Penalty Total \$1,875

This violation Final Assessed Penalty (adjusted for limits) \$1,875

Economic Benefit Worksheet

Respondent: Dave Fisk
Case ID No.: 31741
Reg. Ent. Reference No.: RN105030894
Media: Irrigators
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

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	1-Sep-2006	1-Jun-2007	0.7	\$18	n/a	\$18
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The approximate cost of taking the required basic training course and licensing Irrigation examination. The Date Required is the date of the investigation. The Final Date is the date of expected 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

NA

Approx. Cost of Compliance

\$500

TOTAL

\$18

Compliance History

Customer/Respondent/Owner-Operator: CN603087172 FISK, DAVE Classification: Rating:
Regulated Entity: RN105030894 FISK DAVE Classification: Site Rating:
ID Number(s):
Location: 7208 Lilac Lane B, Austin, Texas 78745-5296 P.
O. Box 10282, Austin, Texas 78766-1282
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: November 14, 2006
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 14, 2001 to November 14, 2006
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: J. Craig Fleming Phone: 239-5806

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? | <u>N/A</u> |
| 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

10.

11. $\frac{1}{2} + \frac{1}{3} = \frac{3}{6} + \frac{2}{6} = \frac{5}{6}$

11.

12. $\frac{1}{4} + \frac{1}{5} = \frac{5}{20} + \frac{4}{20} = \frac{9}{20}$

12.

13. $\frac{1}{6} + \frac{1}{8} = \frac{4}{24} + \frac{3}{24} = \frac{7}{24}$

13.

14. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} = \frac{3}{6} + \frac{2}{6} + \frac{1}{6} = \frac{6}{6} = 1$

14.

15. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} = \frac{3}{12} + \frac{2}{12} + \frac{1}{12} = \frac{6}{12} = \frac{1}{2}$

15.

16. $\frac{1}{3} + \frac{1}{4} + \frac{1}{6} = \frac{4}{12} + \frac{3}{12} + \frac{2}{12} = \frac{9}{12} = \frac{3}{4}$

16.

17. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} = \frac{6}{12} + \frac{4}{12} + \frac{2}{12} + \frac{1}{12} = \frac{13}{12} = 1\frac{1}{12}$

17.

18. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} = \frac{6}{24} + \frac{4}{24} + \frac{2}{24} + \frac{1}{24} = \frac{13}{24}$

18.

19. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} = \frac{12}{24} + \frac{8}{24} + \frac{4}{24} + \frac{2}{24} + \frac{1}{24} = \frac{27}{24} = 1\frac{3}{24} = 1\frac{1}{8}$

19.

20. $\frac{1}{3} + \frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} = \frac{8}{24} + \frac{6}{24} + \frac{4}{24} + \frac{2}{24} + \frac{1}{24} = \frac{21}{24} = \frac{7}{8}$

20.

21. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} = \frac{12}{48} + \frac{8}{48} + \frac{4}{48} + \frac{2}{48} + \frac{1}{48} = \frac{27}{48} = \frac{9}{16}$

21.

22. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} = \frac{24}{48} + \frac{16}{48} + \frac{8}{48} + \frac{4}{48} + \frac{2}{48} + \frac{1}{48} = \frac{55}{48} = 1\frac{7}{48}$

22.

23. $\frac{1}{3} + \frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} = \frac{16}{48} + \frac{12}{48} + \frac{8}{48} + \frac{4}{48} + \frac{2}{48} + \frac{1}{48} = \frac{43}{48}$

23.

24. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} = \frac{48}{96} + \frac{32}{96} + \frac{16}{96} + \frac{8}{96} + \frac{4}{96} + \frac{2}{96} + \frac{1}{96} = \frac{111}{96} = 1\frac{15}{96} = 1\frac{5}{32}$

24.

25. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} = \frac{24}{96} + \frac{16}{96} + \frac{8}{96} + \frac{4}{96} + \frac{2}{96} + \frac{1}{96} = \frac{55}{96}$

25.

26. $\frac{1}{3} + \frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} = \frac{32}{96} + \frac{24}{96} + \frac{16}{96} + \frac{8}{96} + \frac{4}{96} + \frac{2}{96} + \frac{1}{96} = \frac{87}{96} = \frac{29}{32}$

26.

27. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} = \frac{96}{192} + \frac{64}{192} + \frac{32}{192} + \frac{16}{192} + \frac{8}{192} + \frac{4}{192} + \frac{2}{192} + \frac{1}{192} = \frac{213}{192} = 1\frac{21}{192} = 1\frac{7}{64}$

27.

28. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} = \frac{48}{192} + \frac{32}{192} + \frac{16}{192} + \frac{8}{192} + \frac{4}{192} + \frac{2}{192} + \frac{1}{192} = \frac{111}{192} = \frac{37}{64}$

28.

29. $\frac{1}{3} + \frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} = \frac{64}{192} + \frac{48}{192} + \frac{32}{192} + \frac{16}{192} + \frac{8}{192} + \frac{4}{192} + \frac{2}{192} + \frac{1}{192} = \frac{175}{192}$

29.

30. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} = \frac{192}{384} + \frac{128}{384} + \frac{64}{384} + \frac{32}{384} + \frac{16}{384} + \frac{8}{384} + \frac{4}{384} + \frac{2}{384} + \frac{1}{384} = \frac{347}{384}$

30.

31. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} = \frac{96}{384} + \frac{64}{384} + \frac{32}{384} + \frac{16}{384} + \frac{8}{384} + \frac{4}{384} + \frac{2}{384} + \frac{1}{384} = \frac{223}{384}$

31.

32. $\frac{1}{3} + \frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} = \frac{128}{384} + \frac{96}{384} + \frac{64}{384} + \frac{32}{384} + \frac{16}{384} + \frac{8}{384} + \frac{4}{384} + \frac{2}{384} + \frac{1}{384} = \frac{341}{384}$

32.

33. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} + \frac{1}{768} = \frac{768}{768} + \frac{512}{768} + \frac{256}{768} + \frac{128}{768} + \frac{64}{768} + \frac{32}{768} + \frac{16}{768} + \frac{8}{768} + \frac{4}{768} + \frac{1}{768} = \frac{1673}{768}$

33.

34. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} + \frac{1}{768} = \frac{384}{768} + \frac{256}{768} + \frac{128}{768} + \frac{64}{768} + \frac{32}{768} + \frac{16}{768} + \frac{8}{768} + \frac{4}{768} + \frac{1}{768} = \frac{883}{768}$

34.

35. $\frac{1}{3} + \frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} + \frac{1}{768} = \frac{512}{768} + \frac{384}{768} + \frac{256}{768} + \frac{128}{768} + \frac{64}{768} + \frac{32}{768} + \frac{16}{768} + \frac{8}{768} + \frac{4}{768} + \frac{1}{768} = \frac{1393}{768}$

35.

36. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} + \frac{1}{768} + \frac{1}{1536} = \frac{1536}{1536} + \frac{1024}{1536} + \frac{512}{1536} + \frac{256}{1536} + \frac{128}{1536} + \frac{64}{1536} + \frac{32}{1536} + \frac{16}{1536} + \frac{8}{1536} + \frac{4}{1536} + \frac{1}{1536} = \frac{3329}{1536}$

36.

37. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} + \frac{1}{768} + \frac{1}{1536} = \frac{768}{1536} + \frac{512}{1536} + \frac{256}{1536} + \frac{128}{1536} + \frac{64}{1536} + \frac{32}{1536} + \frac{16}{1536} + \frac{8}{1536} + \frac{4}{1536} + \frac{1}{1536} = \frac{1783}{1536}$

37.

38. $\frac{1}{3} + \frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} + \frac{1}{768} + \frac{1}{1536} = \frac{1024}{1536} + \frac{768}{1536} + \frac{512}{1536} + \frac{256}{1536} + \frac{128}{1536} + \frac{64}{1536} + \frac{32}{1536} + \frac{16}{1536} + \frac{8}{1536} + \frac{4}{1536} + \frac{1}{1536} = \frac{2503}{1536}$

38.

39. $\frac{1}{2} + \frac{1}{3} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} + \frac{1}{768} + \frac{1}{1536} + \frac{1}{3072} = \frac{3072}{3072} + \frac{2048}{3072} + \frac{1024}{3072} + \frac{512}{3072} + \frac{256}{3072} + \frac{128}{3072} + \frac{64}{3072} + \frac{32}{3072} + \frac{16}{3072} + \frac{8}{3072} + \frac{4}{3072} + \frac{1}{3072} = \frac{6553}{3072}$

39.

40. $\frac{1}{4} + \frac{1}{6} + \frac{1}{12} + \frac{1}{24} + \frac{1}{48} + \frac{1}{96} + \frac{1}{192} + \frac{1}{384} + \frac{1}{768} + \frac{1}{1536} + \frac{1}{3072} = \frac{1536}{3072} + \frac{1024}{3072} + \frac{512}{3072} + \frac{256}{3072} + \frac{128}{3072} + \frac{64}{3072} + \frac{32}{3072} + \frac{16}{3072} + \frac{8}{3072} + \frac{4}{3072} + \frac{1}{3072} = \frac{3673}{3072}$

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DAVE FISK
RN105030894

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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-1973-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 Dave Fisk ("Mr. Fisk") 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. Fisk appear before the Commission and together stipulate that:

1. Mr. Fisk owns and operates a landscape care business at 7208 Lilac Lane B, Austin, Travis County, Texas. Mr. Fisk installed sprinkler systems at residences located at 1709 Saint Albans Boulevard on/or about June 26, 2006, 3305 Blue Jay Lane and 708 Upson, Austin, Travis County ("the Sites").
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. Fisk agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Fisk is subject to the Commission's jurisdiction.
4. Mr. Fisk received notice of the violations alleged in Section II ("Allegations") on or about November 14, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Fisk of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Fisk has paid One Hundred Dollars (\$100) of the administrative penalty and Three Hundred Seventy-Five Dollars (\$375) is deferred contingent upon Mr. Fisk'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. Fisk fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Fisk to pay all or part of the deferred penalty.

The remaining amount of One Thousand Four Hundred Dollars (\$1,400) of the administrative penalty shall be payable in 14 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Fisk fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Fisk to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Fisk to timely and satisfactorily comply with all the terms of this Agreed Order.

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. Fisk 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. Fisk 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 Sites, Mr. Fisk is alleged to have failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, in violation of 30 TEX. ADMIN CODE §§ 30.5(a) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251, as documented during a record review conducted on September 11, 2006. Specifically, Mr. Fisk installed sprinkler systems at the Sites without an irrigator license.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Fisk pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Fisk'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: David Fisk, Docket No. 2006-1973-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. Fisk 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 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

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

5/24/07

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

2-19-07

Date

DAVID FISK

Name (Printed or typed)
Authorized Representative of
Dave Fisk

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.

