

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0408-LII-E TCEQ ID: RN103660445 CASE NO.: 33135
RESPONDENT NAME: DUSTY L. TURNER

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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: 1234 Kiowa Drive West; 114 Shoshone Drive; and 803 Kiowa Drive East, Gainesville, Cooke County.</p> <p>TYPE OF OPERATION: Landscape irrigation installation operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on September 12, 2006. There is no record of additional pending enforcement actions regarding this person.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter. The complainant has not expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 3, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Water Enforcement Section, MC 128 (512) 239-5690 TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4 (817) 588-5901 Respondent: Mr. Dusty L. Turner, 220 Davis St., Gainesville, Texas 76240-1542</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case September 12, 2006:</p> <p>Dates of Investigation Relating to this Case: December 15, 2006</p> <p>Date of NOE Relating to this Case: March 13, 2007</p> <p>Background Facts:</p> <p>The Executive Director filed the EDRP on August 1, 2007. The Respondent received notice of the EDRP on August 8, 2007, as evidenced by the signature on the "green card." The Respondent has not filed an answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>LII</p> <p>Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license if required [30 TEX. ADMIN. CODE §§ 30.5(a) and (b), and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251].</p>	<p>Total Assessed: \$750</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$750</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Agreed Order.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action(s) Taken The Executive Director recognizes that the Respondent renewed his landscape irrigator license on January 12, 2007.</p> <p>Ordering Provision: N/A</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 15, 2006

DATES	Assigned	19-Mar-2007		
	PCW	19-Mar-2008	Screening	19-Mar-2007
		EPA Due		

RESPONDENT/FACILITY INFORMATION			
Respondent	Dusty L. Turner		
Reg. Ent. Ref. No.	RN103660445		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33135	No. of Violations	1
Docket No.	2007-0408-LII-E	Order Type	1660
Media Program(s)	All Occupational Licenses	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$750
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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	Subtotal 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: No good faith effort is given on default orders.

Total EB Amounts	\$2	0% Enhancement	Subtotal 6	\$0
Approx. Cost of Compliance	\$450	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$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	\$750
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$750
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$750
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Screening Date 19-Mar-2007

Docket No. 2007-0408-LII-E

PCW

Respondent Dusty L. Turner

Policy Revision 2 (September 2002)

Case ID No. 33135

PCW Revision November 15, 2006

Reg. Ent. Reference No. RN103660445

Media [Statute] All Occupational Licenses

Enf. Coordinator Thomas Greimel

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)

N/A

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 adjustment for compliance history.

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

Screening Date 19-Mar-2007

Docket No. 2007-0408-LII-E

PCW

Respondent Dusty L. Turner

Policy Revision 2 (September 2002)

Case ID No. 33135

PCW Revision November 15, 2006

Reg. Ent. Reference No. RN103660445

Media [Statute] All Occupational Licenses

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 344.4(a) 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 selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Turner installed landscape irrigation systems at 1234 Kiowa Drive West, 114 Shoshone Drive, and 803 Kiowa Drive East in Gainesville, Cooke County, Texas, without holding a current irrigator license, as documented during a record review conducted on December 15, 2006.

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 3

28 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$750

Three single events are recommended (one per site).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent: Dusty L. Turner
 Case ID No.: 33135
 Reg. Ent. Reference No.: RN103660445
 Media: All Occupational Licenses
 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
<small>No commas or \$</small>							

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	\$450	15-Dec-2006	12-Jan-2007	0.1	\$2	n/a	\$2
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a current irrigator license. The Date Required is the record-review date and the Final Date is the date of compliance, when the respondent renewed his irrigator license.

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$450

TOTAL

\$2

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DUSTY L. TURNER;
RN103660445

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§
§
§
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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-0408-LII-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEXAS WATER CODE chs. 7 and 37; 30 TEX. ADMIN. CODE chs. 30, 70, and 344; and TEXAS OCCUPATIONS CODE ch 1903, which request appropriate relief, including the imposition of an administrative penalty against the respondent. The respondent made the subject of this Order is Dusty L. Turner ("Mr. Turner").

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

FINDINGS OF FACT

1. Mr. Turner owns and operates a landscape irrigation installation operation located at 220 Davis St., Gainesville, Cooke County, Texas (the "Operation").
2. Mr. Turner is subject to TCEQ jurisdiction pursuant to TEX. OCCUPATIONS CODE ch. 1903, TEX. WATER CODE ch. 37, and 30 TEX. ADMIN. CODE chs. 30 and 344.
3. During a record review conducted on December 15, 2006, a TCEQ Dallas / Fort Worth Regional Office investigator documented that Mr. Turner failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Turner installed landscape irrigation systems at 1234 Kiowa Drive West, 114 Shoshone Drive, and 803 Kiowa Drive East in Gainesville, Cooke County, Texas, without holding a current irrigator license.
4. Mr. Turner received notice of the violation on or about March 13, 2007.
5. The Executive Director recognizes that Mr. Turner renewed his landscape irrigator license on January 12, 2007.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Dusty L. Turner" (the "EDPRP") in the TCEQ Chief Clerk's office on August 1, 2007.
7. By letter dated August 1, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Turner with notice of the EDPRP. According to the return receipt "green card," Mr. Turner received notice of the EDPRP on August 8, 2007, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Turner received notice of the EDPRP, provided by the Executive Director. Mr. Turner failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Turner is subject to the jurisdiction of the TCEQ pursuant to TEXAS WATER CODE chs. 7 and 37; 30 TEX. ADMIN. CODE chs. 30, 70, and 344; and TEXAS OCCUPATIONS CODE ch 1903.
2. As evidenced by Finding of Fact No. 3, Mr. Turner failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Turner installed landscape irrigation systems at 1234 Kiowa Drive West, 114 Shoshone Drive, and 803 Kiowa Drive East in Gainesville, Cooke County, Texas, without holding a current irrigator license, in violation of 30 TEX. ADMIN. CODE §§30.5(a) and (b), and 344.4(a), TEX. WATER CODE §37.003, and TEX. OCCUPATIONS CODE §1903.251.
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Turner with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Mr. Turner failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Turner and assess the penalty recommended by the Executive Director.

5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Turner for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of seven hundred fifty dollars (\$750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Turner is assessed an administrative penalty in the amount of seven hundred fifty dollars (\$750.00) for violation of the Texas Water Code and the Texas Occupations Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Turner's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Dusty L. Turner; Docket No. 2007-0408-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Turner. Mr. Turner is ordered to give notice of this Order to personnel who maintain day-to-day control over the Operation referenced in this Order.

4. If Mr. Turner fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Turner's failure to comply is not a violation of this Order. Mr. Turner shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Turner shall notify the Executive Director within seven days after Mr. Turner 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Turner shall be made in writing to the Executive Director. Extensions are not effective until Mr. Turner receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Turner if the Executive Director determines that Mr. Turner has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

