

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1866-LII-E TCEQ ID: RN104284542 CASE NO.: 34985**  
**RESPONDENT NAME: REX D. MELTON**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 4008 Kingston, Amarillo, Potter County</p> <p><b>TYPE OF OPERATION:</b> Licensed Irrigator</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> One complaint has been received. The complaint alleged that the Respondent failed to have the sprinkler system inspected. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 1, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney: Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  TCEQ Enforcement Coordinator: Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933  TCEQ Regional Contact: Mr. Andrew Gardner, Regulatory Compliance, MC 178, (512) 239-3120  Respondent: Mr. Rex D. Melton, RR #1, Box 16-15, Fritch, Texas 79036-9716  Respondent's Attorney: Mr. James M. Mosley, Attorney, Mitchell, Gassaway, Jones, and Mosley, P.O. Drawer 707, Borger, Texas 79008-0707</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></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><b>Date of Complaint Relating to this Case:</b>                      July 15, 2007</p> <p><b>Date of Investigation Relating to this Case:</b>                      July 26, 2007 and October 10, 2007</p> <p><b>Date of NOE Relating to this Case:</b>                      October 16, 2007</p> <p><b>Background Facts:</b>                      The EDRP was filed on August 27, 2008. A settlement agreement was reached and a signed Agreed Order was received on September 29, 2008.</p> <p><b>Current Compliance Status:</b>                      The Respondent's irrigator license expired on August 31, 2008, thus, the Technical Requirements are moot until/unless renewed.</p> <p><b>LII:</b></p> <p>1. Failed to comply with all local requirements, ordinances, and regulations [30 TEX. ADMIN. CODE § 344.70 and TEX. WATER CODE § 37.013].</p> <p>2. Failed to competently perform services with the currently accepted practice and knowledge of selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system [30 TEX. ADMIN. CODE § 344.92(a) and TEX. WATER CODE § 37.013].</p>	<p><b>Total Assessed:</b> \$1,675</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$1,675</p> <p>The Respondent has paid the administrative penalty in full.</p> <p><b>Site Compliance History Classification</b>                      N/A</p> <p><b>Person Compliance History Classification</b>                      N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions</b>                      The Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days:</p> <p>a) Comply with all local requirements of the City of Amarillo, including the requirement to ensure that all backflow prevention devices are inspected by the City; and</p> <p>b) Comply with all current accepted practices and knowledge of selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, including the requirement to connect sprinkler lines to main water lines.</p> <p>2. Within 45 days submit written, notarized certification to demonstrate compliance with the above ordering provisions.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

<b>DATES</b>	<b>Assigned</b>	15-Oct-2007	<b>Screening</b>	15-Nov-2007	<b>EPA Due</b>	
	<b>PCW</b>	28-Feb-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Rex D. Melton
<b>Reg. Ent. Ref. No.</b>	RN104284542
<b>Facility/Site Region</b>	1 - Amarillo
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	34985	<b>No. of Violations</b>	2
<b>Docket No.</b>	2007-1866-LII-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Irrigators	<b>Enf. Coordinator</b>	Clinton Sims
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>
			\$2,500

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$1,500</b>
---	-------------------	----------------

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$75</b>
---------------------------	----------------	--------------------------------	-------------

<b>Notes</b>	The Respondent received one NOV with same or similar violations.
--------------	--

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
--------------------	----	----------------	-------------------	------------

<b>Notes</b>	The Respondent does not meet the culpability criteria.
--------------	--

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	<b>\$0</b>
------------------------------------	--------------	-------------------	------------

	<b>Before NOV</b>	<b>NOV to EDPRP/Settlement Offer</b>
<b>Extraordinary</b>		
<b>Ordinary</b>		
<b>N/A</b>	X	(mark with x)
<b>Notes</b>	The Respondent does not meet the good faith criteria.	

	0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
--	-----------------	-------------------	------------

<b>Total EB Amounts</b>	\$119	<b>*Capped at the Total EB \$ Amount</b>
<b>Approx. Cost of Compliance</b>	\$300	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$1,575</b>
-----------------------------	-----------------------	----------------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	6%	<b>Adjustment</b>	<b>\$100</b>
---	----	-------------------	--------------

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended adjustment to capture the avoided cost benefit associated with the violations.
--------------	--

<b>Final Penalty Amount</b>	<b>\$1,675</b>
-----------------------------	----------------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$1,675</b>
-----------------------------------	-------------------------------	----------------

<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	<b>\$0</b>
-----------------	--------------	-------------------	------------

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

<b>Notes</b>	Deferral not offered for non-expedited settlement.
--------------	--

<b>PAYABLE PENALTY</b>	<b>\$1,675</b>
------------------------	----------------

Screening Date 15-Nov-2007

Docket No. 2007-1866-LII-E

PCW

Respondent Rex D. Melton

Policy Revision 2 (September 2002)

Case ID No. 34985

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104284542

Media [Statute] Irrigators

Enf. Coordinator Clinton Sims

## Compliance History Worksheet

## &gt;&gt; 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)	1	5%
	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) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The Respondent received one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b> 15-Nov-2007	<b>Docket No.</b> 2007-1866-LII-E	<b>PCW</b>
<b>Respondent</b> Rex D. Melton	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34985	<i>PCW Revision November 6, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN104284542		
<b>Media [Statute]</b> Irrigators		
<b>Enf. Coordinator</b> Clinton Sims		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 344.70 and Tex. Water Code § 37.013	
<b>Violation Description</b>	Failure by a licensed irrigator to comply with local requirements, ordinances, and regulations. Specifically, the Respondent installed an irrigation system at 4008 Kingston, Amarillo, Potter County, Texas but did not have the backflow prevention device inspected by the City of Amarillo.	
<b>Base Penalty</b>		<input type="text" value="\$2,500"/>

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	<b>Actual</b>	<input type="text"/>	<input type="text"/>		<input type="text"/>
<b>Potential</b>	x	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>	

**>> Programmatic Matrix**

	<b>Falsification</b>				
		Major	Moderate		Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>		<input type="text"/>
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to pollutants which would exceed protective levels.			<b>Percent</b> <input type="text" value="0%"/>	
<b>Adjustment</b>				<input type="text" value="\$1,875"/>	

**Violation Events**

<b>Number of Violation Events</b>	<input type="text" value="2"/>	<input type="text" value="37"/>	<b>Number of violation days</b>
<i>mark only one with an x</i>	<b>daily</b>	<input type="text"/>	
	<b>monthly</b>	x	
	<b>quarterly</b>	<input type="text"/>	
	<b>semiannual</b>	<input type="text"/>	
	<b>annual</b>	<input type="text"/>	
	<b>single event</b>	<input type="text"/>	
<b>Violation Base Penalty</b>			<input type="text" value="\$1,250"/>

Two monthly events are recommended from the October 10, 2007 record review date to the November 15, 2007 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$11"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,396"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,396"/>	

## Economic Benefit Worksheet

**Respondent:** Rex D. Melton  
**Case ID No.:** 34985  
**Reg. Ent. Reference No.:** RN104284542  
**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
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$200	10-Oct-2007	19-Jul-2008	0.8	\$1	\$10	\$11
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				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to have the backflow prevention device inspected by the City of Amarillo. The Date Required is the date of the investigation and the Final Date is 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

\$200

**TOTAL**

\$11

<b>Screening Date</b> 15-Nov-2007	<b>Docket No.</b> 2007-1866-LII-E	<b>PCW</b>		
<b>Respondent</b> Rex D. Melton	<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 34985	<small>PCW Revision November 6, 2007</small>			
<b>Reg. Ent. Reference No.</b> RN104284542				
<b>Media [Statute]</b> Irrigators				
<b>Enf. Coordinator</b> Clinton Sims				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 344.92(a) and Tex. Water Code § 37.013			
<b>Violation Description</b>	Failure in the competence in the performance of services by a licensed irrigator in the currently accepted practice and knowledge of selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system. Specifically, the Respondent did not properly connect the sprinkler line to the main water line at 4008 Kingston, Amarillo, Potter County, Texas.			
<b>Base Penalty</b>		<input type="text" value="\$2,500"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	x	<input type="text"/>	
		<b>Percent</b>	<input type="text" value="10%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed protective levels.			
<b>Adjustment</b>		<input type="text" value="\$2,250"/>		
		<input type="text" value="\$250"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<input type="text" value="37"/> <b>Number of violation days</b>	
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$250"/>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
One single event is recommended.				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b> <input type="text" value="\$108"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$279"/>		
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$279"/>		

### Economic Benefit Worksheet

**Respondent:** Rex D. Melton  
**Case ID No.:** 34985  
**Reg. Ent. Reference No.:** RN104284542  
**Media:** Irrigators  
**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	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				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**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)	\$100	10-Oct-2007	19-Jul-2008	1.7	\$8	\$100	\$108

Notes for AVOIDED costs

Estimated cost to connect the sprinkler line to the main water line at the site location. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Approx. Cost of Compliance \$100

**TOTAL** \$108

# Compliance History

Customer/Respondent/Owner-Operator: CN602638306 MELTON, REX D Classification: Rating:  
 Regulated Entity: RN104284542 MELTON, REX D Classification: Site Rating:

ID Number(s): LANDSCAPE IRRIGATION LICENSING LICENSE LI0012271

Location:

TCEQ Region: REGION 01 - AMARILLO

Date Compliance History Prepared: November 15, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 15, 2002 to November 15, 2007

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

Name: Clinton Sims Phone: (512) 239-6933

## 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.)

Date: 08/24/2007 (569847)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 344, SubChapter D 344.70

Description: Failure by a licensed irrigator to comply with local regulations that require 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, during a record review initiated on 07/26/07, it was documented that Mr. Rex Melton, Landscape Irrigator License No. 12271, Golden Spread Sprinkler Systems pulled a permit at the site locatio

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 344, SubChapter F 344.92(a)

Description: Failure in the competency in the performance of services of a licensed irrigator or installer in the knowledge and skill in the currently accepted practice and knowledge of selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system including the connection of such system in and to a private or public, raw or potable water supply system or any water supply.

Specifically, during a record review initiated on 07/26/07, it was documented that Mr.

- 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  
ENFORCEMENT ACTION  
CONCERNING  
REX D. MELTON,  
RN104284542

§  
§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2007-1866-LII-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Rex D. Melton ("Mr. Melton") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Melton, represented by James M. Mosley of the law firm of Mitchell, Gassaway, Jones & Mosley, appear before the Commission and together stipulate that:

1. Mr. Melton is a licensed irrigator (License No. LI0012271) and owns and operates a landscape irrigation business located at 504 South Vaughn Avenue, Fritch, Hutchinson County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 37.003 because it alleges violations of TEX. OCCUPATIONS CODE ch. 1903 and TEX. WATER CODE ch. 37;
3. The Commission and Mr. Melton agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Melton is subject to the Commission's jurisdiction.
4. Mr. Melton received notice of the violations alleged in Section II ("Allegations") on or about October 21, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Melton of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of one thousand six hundred seventy-five dollars (\$1,675.00) is assessed by the Commission in settlement of the violations alleged in Section

- II ("Allegations"). Mr. Melton has paid one thousand six hundred seventy-five dollars (\$1,675.00) of the administrative 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. Melton 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. Melton 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. Melton is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 344.70 and TEX. WATER CODE § 37.013 by failing to comply with all local requirements, ordinances, and regulations as documented on July 26, 2007. Specifically, Mr. Melton installed an irrigation system at 4008 Kingston, Amarillo, Potter County, Texas but did not have the backflow prevention device inspected by the City of Amarillo.
2. 30 TEX. ADMIN. CODE § 344.92(a) and TEX. WATER CODE § 37.013 by failing to competently perform services with the currently accepted practice and knowledge of selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system as documented on July 26, 2007. Specifically, Mr. Melton did not properly connect the sprinkler line to the main water line at 4008 Kingston, Amarillo, Potter County, Texas.

## III. DENIALS

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

#### IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Melton pay an administrative penalty as set forth in Section I, Paragraph six above. The payment of this administrative penalty and Mr. Melton'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Rex D. Melton, Docket No. 2007-1866-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. Mr. Melton shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Mr. Melton shall:
    - i. Comply with all local requirements of the City of Amarillo, including the requirement to ensure that all backflow prevention devices are inspected by the City of Amarillo; and
    - ii. Comply with all current accepted practices and knowledge of selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, including the requirement to properly connect sprinkler lines to main water lines.
  - b. Within 45 days after the effective date of this Agreed Order, Mr. Melton shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.ii.

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.”

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Robert Mann, Compliance Support Manager  
Regulatory Compliance Section, MC 219  
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. Melton. Mr. Melton is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.
4. If Mr. Melton 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. Melton's failure to comply is not a violation of this Agreed Order. Mr. Melton shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Melton shall notify the Executive Director within seven days after Mr. Melton 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. Melton shall be made in writing to the Executive Director. Extensions are not effective until Mr. Melton 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. Melton 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Melton, or three days after the date on which the Commission mails notice of the Order to Mr. Melton, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Rex D. Melton  
DOCKET NO. 2007-1866-LII-E  
Page 6

### SIGNATURE PAGE

#### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Johnnie Purdie*

For the Executive Director

11/3/08

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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.

*R. Melton*  
Signature

7-23-08  
Date

Rex Melton  
Name (Printed or typed)  
Authorized representative of  
Rex D. Melton

Owner  
Title