

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1273-LII TCEQ ID: RN105239826 CASE NO.: 34402**  
**RESPONDENT NAME: JAMES W. HACKNEY**

<b>ORDER TYPE:</b>		
<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	
<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> 28003 East Benders Landing Blvd., Spring, Harris County</p> <p><b>TYPE OF OPERATION:</b> Landscape irrigation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> One complaint was received, alleging that the Respondent installed an irrigation system without an irrigator license. There is no record of additional pending enforcement actions regarding this respondent.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired June 22, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577  TCEQ Regional Contact: Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581  Respondent: Mr. James W. Hackney, 19719 Mesquite Branch Court, Spring, Texas 77388  Respondent's Attorney: Not represented by counsel on this enforcement matter.</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>                      June 18, 2007</p> <p><b>Date of Investigation Relating to this Case:</b>                      July 11, 2007</p> <p><b>Date of NOE Relating to this Case:</b>                      July 12, 2007</p> <p><b>Background Facts:</b> The EDPRP was filed February 5, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 8, 2008. The EDFARP was filed March 19, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDFARP on March 21, 2009. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                      The Respondent has not obtained an irrigator license.</p> <p><b>LII:</b>                      Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, advertising, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required [30 TEX. ADMIN. CODE §§ 30.5(a) and (b) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251].</p>	<p><b>Total Assessed:</b> \$736</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$736</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 Order.</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></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, cease advertising, selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed.</li> <li>2. Within 15 days, submit written certification to demonstrate compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

**TCEQ**

DATES	Assigned	16-Jul-2007	Screening	7-Aug-2007	EPA Due	
	PCW	26-Nov-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	James W. Hackney		
Reg. Ent. Ref. No.	RN105239826		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	34402	No. of Violations	1	
Docket No.	2007-1273-LII-E	Order Type	1660	
Media Program(s)	All Occupational Licenses	Enf. Coordinator	Rajesh Acharya	
Multi-Media		EC's Team	EnforcementTeam 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$2,500

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$625

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

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

**Compliance History** 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No adjustment for compliance history.

**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.

**Total EB Amounts** \$111 0% Enhancement\* Subtotal 6 \$0  
**Approx. Cost of Compliance** \$111 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$625

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 18% Adjustment \$111

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes Recommended adjustment to capture the avoided cost of compliance.

**Final Penalty Amount** \$736

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$736

**DEFERRAL** 0% Reduction Adjustment \$0

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** \$736

Screening Date 7-Aug-2007

Docket No. 2007-1273-LII-E

PCW

Respondent James W. Hackney

Policy Revision 2 (September 2002)

Case ID No. 34402

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105239826

Media [Statute] All Occupational Licenses

Enf. Coordinator Rajesh Acharya

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

<p><b>Screening Date</b> 7-Aug-2007</p> <p><b>Respondent</b> James W. Hackney</p> <p><b>Case ID No.</b> 34402</p> <p><b>Reg. Ent. Reference No.</b> RN105239826</p> <p><b>Media [Statute]</b> All Occupational Licenses</p> <p><b>Enf. Coordinator</b> Rajesh Acharya</p> <p><b>Violation Number</b> <input type="text" value="1"/></p> <p><b>Rule Cite(s)</b> 30 Tex. Admin. Code §§ 344.4(a), 30.5(a) and (b), Tex. Water Code § 37.003, and Tex. Occupations Code § 1903.251</p> <p><b>Violation Description</b>                  Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, advertising, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Hackney installed a landscape irrigation system at 28003 East Benders Landing Boulevard in Spring, Harris County, Texas, without holding an irrigator license, as documented during a record review conducted on July 11, 2007.</p>	<p><b>Docket No.</b> 2007-1273-LII-E</p> <p style="text-align: right;"><b>PCW</b>                  Policy Revision 2 (September 2002)                  PCW Revision June 26, 2007</p> <p style="text-align: right;"><b>Base Penalty</b> <input type="text" value="\$2,500"/></p>																			
<p><b>&gt;&gt; Environmental, Property and Human Health Matrix</b></p>																				
<p><b>OR</b></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Release</th> <th colspan="3" style="text-align: center;">Harm</th> <th></th> </tr> <tr> <th></th> <th style="text-align: center;">Major</th> <th style="text-align: center;">Moderate</th> <th style="text-align: center;">Minor</th> <th></th> </tr> </thead> <tbody> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right;"><b>Percent</b> <input type="text" value="25%"/></td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </tbody> </table>	Release	Harm					Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>	Potential	x	<input type="text"/>	<input type="text"/>
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<p><b>&gt;&gt; Programmatic Matrix</b></p>																				
<p><b>Matrix Notes</b></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Falsification</th> <th style="text-align: center;">Major</th> <th style="text-align: center;">Moderate</th> <th style="text-align: center;">Minor</th> <th></th> </tr> </thead> <tbody> <tr> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: right;"><b>Percent</b> <input type="text" value="0%"/></td> </tr> </tbody> </table> <p style="border: 1px solid black; padding: 5px; margin-top: 5px;">Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.</p> <p style="text-align: right;"><b>Adjustment</b> <input type="text" value="\$1,875"/></p>	Falsification	Major	Moderate	Minor		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>									
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<p><b>Violation Events</b></p>																				
<p>Number of Violation Events <input type="text" value="1"/></p>	<p><input type="text" value="27"/> Number of violation days</p>																			
<p><i>mark only one with an x</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x	<p style="text-align: right;"><b>Violation Base Penalty</b> <input type="text" value="\$625"/></p>							
daily	<input type="text"/>																			
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semiannual	<input type="text"/>																			
annual	<input type="text"/>																			
single event	x																			
<p style="border: 1px solid black; padding: 5px; text-align: center;">One single event is recommended based on documentation of the violation during the July 11, 2007 record review.</p>																				
<p><b>Economic Benefit (EB) for this violation</b> <span style="float: right;"><b>Statutory Limit Test</b></span></p>																				
<p>Estimated EB Amount <input type="text" value="\$111"/></p>	<p>Violation Final Penalty Total <input type="text" value="\$736"/></p>																			
<p><b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$736"/></p>																				

## Economic Benefit Worksheet

**Respondent** James W. Hackney  
**Case ID No.** 34402  
**Reg. Ent. Reference No.** RN105239826  
**Media** All Occupational Licenses  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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)				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]	\$111	11-Jul-2007	7-Aug-2007	0.0	\$0	\$111	\$111
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain an irrigator license. The date required is the record review date. The final date is the screening date.

Approx. Cost of Compliance

\$111

TOTAL

\$111

# Compliance History

Customer/Respondent/Owner-Operator:	CN603200148	HACKNEY, JAMES W	Classification:	Rating:
Regulated Entity:	RN105239826	HACKNEY JAMES W	Classification:	Site Rating:
ID Number(s):				
Location:	19719 MESQUITE BRANCH CT, SPRING, TX, 77388			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	August 20, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 20, 2002 to August 20, 2007			

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

Name: Chris Holcomb Phone: (512) 239-2541

## 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?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

## 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.)
- 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  
JAMES W. HACKNEY;  
RN105239826**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2007-1273-LII-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is James W. Hackney ("Mr. Hackney").

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

### **FINDINGS OF FACT**

1. Mr. Hackney owns and operates a landscape irrigation business located at 19719 Mesquite Branch Court, Spring, Harris County, Texas (the "Business")
2. Mr. Hackney is subject to the enforcement authority of the Commission pursuant to TEX. WATER CODE § 7.002 because the violations alleged herein are within the Commission's general jurisdiction, pursuant to TEX. WATER CODE § 5.013, as they involve violations of the state's landscape irrigation program
3. During a record review conducted on July 11, 2007, a TCEQ Central Office investigator documented that Mr. Hackney failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, advertising, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Hackney installed a landscape irrigation system at 28003 East Benders Landing Boulevard in Spring, Harris County, Texas, without holding an irrigator license.
4. Mr. Hackney received notice of the violation on or about July 17, 2007.

5. 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 and Requiring Certain Actions of James W. Hackney" (the "EDPRP") in the TCEQ Chief Clerk's office on February 5, 2008. Additionally, the Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of James W. Hackney" (the "EDFARP") in the TCEQ Chief Clerk's office on March 19, 2009.
6. By letter dated February 5, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hackney with notice of the EDPRP. According to the return receipt "green card," Mr. Hackney received notice of the EDPRP on February 7, 2008, as evidenced by the signature on the card. By letter dated March 19, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hackney with notice of the EDFARP. According to the return receipt "green card," Mr. Hackney received notice of the EDFARP on March 21, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Hackney received notice of the EDPRP and more than 20 days have elapsed since Mr. Hackney received notice of the EDFARP, provided by the Executive Director. Mr. Hackney failed to file an answer to the EDPRP and failed to file an answer to the EDFARP, 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. Hackney is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Hackney failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, advertising, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Hackney installed a landscape irrigation system at 28003 East Benders Landing Boulevard in Spring, Harris County, Texas, without holding an 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. OCC. CODE § 1903.251.

3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Hackney with proper notice of the EDPRP and of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Hackney failed to file a timely answer to either the EDPRP or the EDFARP, 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. Hackney 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. Hackney 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 thirty-six dollars (\$736.00) 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. Hackney is assessed an administrative penalty in the amount of seven hundred thirty-six dollars (\$736.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Hackney'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: James W. Hackney; Docket No. 2007-1273-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. Hackney shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Mr. Hackney shall cease selling, designing, consulting, installing, maintaining, altering, repairing, advertising, or servicing landscape irrigation systems until properly licensed in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 344.
  - b. Within 15 days after the effective date of this Order, Mr. Hackney shall submit written certification and detailed supporting documentation, including photographs, receipts, and 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."

Mr. Hackney shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a.:

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

with a copy to:

Manager, Regulatory Compliance Section, MC 178  
Compliance Support Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Hackney. Mr. Hackney is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
5. If Mr. Hackney 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. Hackney's failure to comply is not a violation of this Order. Mr. Hackney shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hackney shall notify the Executive Director within seven days after Mr. Hackney becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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. Hackney shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hackney receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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. Hackney if the Executive Director determines that Mr. Hackney has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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. GOVT CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF RUDY CALDERON**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Rudy Calderon. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

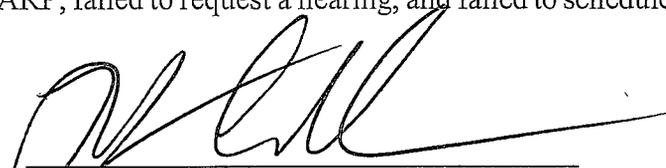
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of James W. Hackney” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 5, 2008.

The “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of James W. Hackney” (the “EDFARP”) was filed with the Office of the Chief Clerk on March 19, 2009.

The EDPRP was mailed to Mr. Hackney at his last known address on February 5, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Hackney received notice of the EDPRP on February 7, 2008, as evidenced by the signature on the card.

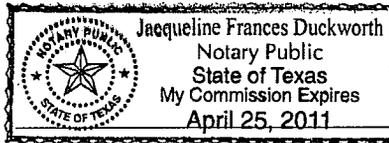
The EDFARP was mailed to Mr. Hackney at his last known address on March 19, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Hackney received notice of the EDFARP on March 21, 2009, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Hackney received notice of the EDFARP. Mr. Hackney failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.”

  
\_\_\_\_\_  
Rudy Calderon, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 8<sup>th</sup> day of May, A.D., 2009.



Notary Signature