

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0940-LII-E TCEQ ID RN105723324 CASE NO. 37818
RESPONDENT NAME: COLBY GREEN

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 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

SITE WHERE VIOLATION OCCURRED: 3800 Avery Woods Lane, Cedar Park, Williamson County

TYPE OF OPERATION: Landscape irrigation business

SMALL BUSINESS: Yes No N/A

OTHER SIGNIFICANT MATTERS: One complaint was received alleging that the Respondent failed to obtain a permit prior to installing an irrigation system. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or to speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired January 18, 2010. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Ms. Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator:** Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563
- TCEQ Regional Contact:** Mr. Allan Vargas, Operator Licensing Section, MC 178, (512) 239-6139
- Respondent:** Mr. Colby Green, 1200 Brighton Bend Lane, Cedar Park, Texas 78613
- Respondent's Attorney:** Not represented by counsel on this enforcement matter.

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 Complaint Relating to this Case: March 6, 2009</p> <p>Date of Investigation Relating to this Case: March 6, 2009</p> <p>Date of NOE Relating to this Case: June 5, 2009</p> <p>Background Facts: The EDPRP was filed October 9, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>LII: Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, and failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required [30 TEX. ADMIN. CODE §§ 30.5(a) and (b) and 344.30, TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251].</p>	<p>Total Assessed: \$1,286</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$1,286</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 proposed 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>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately cease advertising, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed. 2. Within 15 days, submit written certification to demonstrate compliance with Ordering Provision No. 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	8-Jun-2009			
	PCW	28-Sep-2009	Screening	18-Jun-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Colby Green				
Reg. Ent. Ref. No.	RN105723324				
Facility/Site Region	11-Austin	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37818	No. of Violations	1		
Docket No.	2009-0940-LII-E	Order Type	1660		
Media Program(s)	Irrigators	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	John Shelton		
		EC's Team	Enforcement Team 7		
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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
---------------------------	------------------	--------------------------------	-----

Notes: No adjustment due to compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$661	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$661	

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

OTHER FACTORS AS JUSTICE MAY REQUIRE	105.8%	Adjustment	\$661
---	--------	-------------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with the violation.

Final Penalty Amount	\$1,286
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,286
-----------------------------------	-------------------------------	---------

DEFERRAL	0.0% Reduction	Adjustment	\$0
-----------------	----------------	-------------------	-----

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$1,286
------------------------	---------

Screening Date 18-Jun-2009

Docket No. 2009-0940-LII-E

PCW

Respondent Colby Green

Policy Revision 2 (September 2002)

Case ID No. 37818

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105723324

Media [Statute] Irrigators

Enf. Coordinator John Shelton

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 adjustment due to compliance history.

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

Screening Date 18-Jun-2009 **Docket No.** 2009-0940-LII-E **PCW**
Respondent Colby Green *Policy Revision 2 (September 2002)*
Case ID No. 37818 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105723324
Media [Statute] Irrigators
Enf. Coordinator John Shelton

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a) and (b), and 344.30, 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 failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required, as documented during a record review conducted on March 6, 2009. Specifically, the Respondent installed an irrigation system at 3800 Avery Woods Lane in Cedar Park, Williamson County, Texas, and was advertising irrigation services via a website without holding an irrigator license.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes 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 this violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="x"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction Before NOV NOV to EUPRF/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Colby Green
Case ID No. 37818
Reg. Ent. Reference No. RN105723324
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$661	6-Mar-2009	6-Mar-2009	0.00	\$0	\$661	\$661
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain an irrigator license. The Date Required is the date the irrigation system was installed and the Final Date is the record review date.

Approx. Cost of Compliance \$661

TOTAL \$661

Compliance History Report

Customer/Respondent/Owner-Operator: CN603474040 GREEN, COLBY Classification: Rating:
Regulated Entity: RN105723324 GREEN COLBY Classification: Site Rating:
ID Number(s):
Location: 1200 BRIGHTON BEND LN, CEDAR PARK, TX, 78613
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: June 18, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 18, 2004 to June 18, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: John Shelton Phone: (512) 239-2563

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
COLBY GREEN;
RN105723324

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2009-0940-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 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 Colby Green ("Mr. Green").

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

FINDINGS OF FACT

1. Mr. Green owns and operates a landscape irrigation business located at 1200 Brighton Bend Lane in Cedar Park, Williamson County, Texas (the "Business"). Mr. Green installed an irrigation system at 3800 Avery Woods Lane in Cedar Park, Williamson County, Texas (the "Site").
2. Mr. Green sells, designs, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Green is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903, TEX. WATER CODE ch. 37, and the rules of the TCEQ.
3. During a record review investigation conducted on March 6, 2009, a TCEQ Landscape Irrigation Licensing Program investigator documented that Mr. Green failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required. Specifically, Mr. Green installed an irrigation system at the Site and was advertising irrigation services via a website without holding an irrigator license.

4. Mr. Green received notice of the violation on or about June 10, 2009.
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 Colby Green" (the "EDPRP") in the TCEQ Chief Clerk's office on October 9, 2009.
6. By letter dated October 9, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Green with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Green received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Green received notice of the EDPRP provided by the Executive Director. Mr. Green 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. Green is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Green failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and (b) and 344.30, 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 Colby Green with proper notice of the EDPRP as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Mr. Green 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. Green 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. Green for violations of the Texas Water Code and the Texas Occupations 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 one thousand two hundred eighty-six dollars (\$1,286.00) 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. Green is assessed an administrative penalty in the amount of one thousand two hundred eighty-six dollars (\$1,286.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Green'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 that 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: Colby Green; Docket No. 2009-0940-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. Green shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Green shall cease advertising, 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.

- b. Within 15 days after the effective date of this Order, Mr. Green shall submit written certification and 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.”

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

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

with a copy to:

Allan Vargas, Operator Licensing Section Manager
Texas Commission on Environmental Quality
P.O. Box 13087, MC 178
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. Green. Mr. Green 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. Green 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. Green's failure to comply is not a violation of this Order. Mr. Green shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Green shall notify the Executive Director within seven days after Mr. Green 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. Green shall be made in writing to the Executive Director. Extensions are not effective until Mr. Green 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. Green if the Executive Director determines that Mr. Green 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. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEPHANIE J. FRAZEE

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

“My name is Stephanie J. Frazee. 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 Colby Green” (the “EDPRP”) was filed with the Office of the Chief Clerk on October 9, 2009.

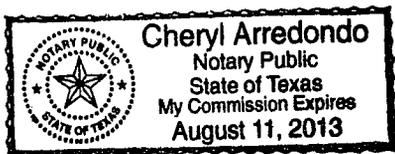
The EDPRP was mailed to Mr. Green at his last known address on October 9, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Green received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Steph Jell
Stephanie J. Frazee, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 24 day of November, A.D., 2009.



Cheryl Arredondo
Notary Signature