

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2010-0198-LII-E RN103704169 CASE NO. 39137**  
**RESPONDENT NAME: BENJAMIN D. BAIZE**

<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 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(S) OCCURRED:** Del Rio, Val Verde County: 500 Farhills, 206 Farhills, 305 Bolner, 205 Ceniza Ridge, 2003 North Main, 100 Mesquite, 320 Griner, and 760 Windmill Trail

**TYPE OF OPERATION:** landscape irrigation business

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** Two complaints were received, alleging that Respondent failed to obtain permits for irrigation systems, failed to install backflow prevention devices, failed to have backflow prevention devices tested, submitted plans that lacked information and were not sealed, and wrote a check to the City of Del Rio for reinspection fees and a plan review fee and the check was returned. There is no record of additional pending enforcement actions regarding this respondent.

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired September 6, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Ms. Theresa Hagood, Waste Enforcement Section, MC 128, (512) 239-2540  
**TCEQ Regional Contact:** Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 791-6611  
**Respondent:** Mr. Benjamin D. Baize, 760 Windmill Trail, Del Rio, Texas 78840  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<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>Dates of Complaints Relating to this Case:</b>            January 14, 2009; March 26, 2009</p> <p><b>Date of Investigation Relating to this Case:</b>            December 17, 2009</p> <p><b>Date of NOE Relating to this Case:</b>            December 28, 2009</p> <p><b>Background Facts:</b>            The EDPRP was filed on June 9, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on June 11, 2010. 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>            Respondent's Landscape Irrigator license expires August 31, 2011. Respondent's Backflow Prevention Assembly Tester license expires October 26, 2012.</p> <p><b>LII:</b></p> <ol style="list-style-type: none"> <li>Failed to comply with local requirements, ordinances and regulations designed to protect the public water supply [30 TEX. ADMIN. CODE §§ 344.24(a) and 344.35(d)(2)].</li> <li>Failed to properly repair landscape irrigation systems [30 TEX. ADMIN. CODE §§ 344.35(d)(4) and 344.52(a)].</li> <li>Failed to include an irrigator's stamp and use a scale on an irrigation plan [30 TEX. ADMIN. CODE §§ 344.61(c)(1) and (8)].</li> </ol>	<p><b>Total Assessed:</b> \$4,561</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$4,561</p> <p>This is a Default Order. 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>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately cease installing irrigation systems prior to obtaining permits from the local government authorities.</li> <li>Within 30 days:               <ol style="list-style-type: none"> <li>Properly install and test backflow prevention devices prior to placing irrigation systems in service; and</li> <li>Begin providing an irrigator's stamp and a scale for drawings on all irrigation plans.</li> </ol> </li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	7-Jan-2010			
	<b>PCW</b>	17-May-2010	<b>Screening</b>	1-Feb-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Benjamin D. Baize				
<b>Reg. Ent. Ref. No.</b>	RN103704169				
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	39137	<b>No. of Violations</b>	3		
<b>Docket No.</b>	2010-0198-LII-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Irrigators	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Theresa Hagood		
		<b>EC's Team</b>	Enforcement Team 6		
<b>Admin. Penalty \$ Limit</b>	<b>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>	\$3,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustments due to compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$1,113	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,680	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$3,500
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	30.3%	<b>Adjustment</b>	\$1,061
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement to capture avoided costs for violation no. 1.
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<b>Final Penalty Amount</b>	\$4,561
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,561
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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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.
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<b>PAYABLE PENALTY</b>	\$4,561
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**Screening Date** 1-Feb-2010

**Docket No.** 2010-0198-LII-E

**PCW**

**Respondent** Benjamin D. Baize

Policy Revision 2 (September 2002)

**Case ID No.** 39137

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN103704169

**Media [Statute]** Irrigators

**Enf. Coordinator** Theresa Hagood

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 0%

**>> Repeat Violator (Subtotal 3)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

No adjustments due to compliance history.

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

**Screening Date** 1-Feb-2010 **Docket No.** 2010-0198-LII-E **PCW**  
**Respondent** Benjamin D. Baize *Policy Revision 2 (September 2002)*  
**Case ID No.** 39137 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN103704169  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Theresa Hagood

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**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="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	
<input type="text" value="100% of the rule requirement was not met."/>					
<b>Adjustment</b>	<input type="text" value="\$2,250"/>				

**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 checked="" type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	
<b>Violation Subtotal</b>	<input type="text" value="\$1,750"/>	

**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** Benjamin D. Baize  
**Case ID No.** 39137  
**Reg. Ent. Reference No.** RN103704169  
**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]	\$980	21-Mar-2009	17-Dec-2009	1.66	\$81	\$980	\$1,061
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated costs to obtain permits from the City of Del Rio for the seven sites. The Date Required is the date of the installation. The Final Date is the record review date.

Approx. Cost of Compliance

\$980

TOTAL

\$1,061

<b>Screening Date</b>	1-Feb-2010	<b>Docket No.</b>	2010-0198-LII-E	<b>PCW</b>
<b>Respondent</b>	Benjamin D. Baize	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	39137	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN103704169			
<b>Media [Statute]</b>	Irrigators			
<b>Enf. Coordinator</b>	Theresa Hagood			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 344.35(d)(4) and 344.52(a)			
<b>Violation Description</b>	Failed to properly repair landscape irrigation systems. Specifically, the Respondent did not properly install the backflow prevention devices and have them inspected at the following locations: 500 Farhills, 206 Farhills, 305 Bolner, 205 Ceniza Ridge, 2003 North Main, and 320 Griner in Del Rio, Texas.			
<b>Base Penalty</b>	\$2,500			

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

OR	<b>Harm</b>			Percent
	Major	Moderate	Minor	
	Actual			
Potential		x		10%

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	Human health or the environment could be exposed to a significant amount of pollutants that would not exceed levels protective of human health or environmental receptors.				0%

**Adjustment** \$2,250

\$250

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

**Violation Base Penalty** \$1,500

Six single events (one event per location) are recommended.

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDP RP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

**Violation Subtotal** \$1,500

**Economic Benefit (EB) for this violation**  **Statutory Limit Test**

**Estimated EB Amount** \$45 **Violation Final Penalty Total** \$1,955

**This violation Final Assessed Penalty (adjusted for limits)** \$1,955

## Economic Benefit Worksheet

**Respondent** Benjamin D. Baize  
**Case ID No.** 39137  
**Reg. Ent. Reference No.** RN103704169  
**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
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)	\$600	21-Mar-2009	14-Sep-2010	1.48	\$45	n/a	\$45

Notes for DELAYED costs

Estimated cost to properly install six backflow prevention devices and have it inspected. The Date Required is the date of installation. The Final Date is the estimated date of compliance.

### 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$600

TOTAL

\$45

<b>Screening Date</b>	1-Feb-2010	<b>Docket No.</b>	2010-0198-LII-E	<b>PCW</b>
<b>Respondent</b>	Benjamin D. Baize	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	39137	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN103704169			
<b>Media [Statute]</b>	Irrigators			
<b>Enf. Coordinator</b>	Theresa Hagood			
<b>Violation Number</b>	3			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 344.61(c)(1) and (8)			
<b>Violation Description</b>	Failed to include an irrigator's stamp and use a scale on an irrigation plan. Specifically, the Respondent did not stamp and use a scale on the irrigation plan for the system installed at 100 Mesquite in Del Rio, Texas.			
<b>Base Penalty</b>				\$2,500

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

<b>OR</b>	<b>Harm</b>			<b>Percent</b>	
	<b>Release</b>	Major	Moderate		Minor
	Actual				
Potential				0%	

**>> Programmatic Matrix**

<b>Matrix Notes</b>	<b>Falsification</b>	Major	Moderate	Minor	<b>Percent</b>
		x			
	100% of the rule requirement was not met.				

**Adjustment** \$2,250

\$250

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

**Violation Base Penalty** \$250

One single event is recommended.

**Good Faith Efforts to Comply**  Reduction

	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 for this violation.

**Violation Subtotal** \$250

**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** Benjamin D. Baize  
**Case ID No.** 39137  
**Reg. Ent. Reference No.** RN103704169  
**Media** Irrigators  
**Violation No.** 3

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)	\$100	24-Mar-2009	14-Sep-2010	1.48	\$7	n/a	\$7

Notes for DELAYED costs

Estimated cost to stamp and use a scale on an irrigation plan. The Date Required is the date of submitting the irrigation plan. The Final Date is the estimated date of compliance.

### 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$7

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602221327 Benjamin D. Baize	Classification:	Rating:
Regulated Entity:	RN103704169 BAIZE, BENJAMIN D	Classification:	Site Rating:
ID Number(s):	BACKFLOW PREVENTION ASSEMBLY	LICENSE	BP0012318
	TESTER LICENSING		
	LANDSCAPE IRRIGATION LICENSING	LICENSE	LI0005638
Location:	760 Windmill Trail, Del Rio, Val Verde County, Texas		
TCEQ Region:	REGION 16 - LAREDO		
Date Compliance History Prepared:	February 17, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 04, 2005 to February 04, 2010		

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

Name: Theresa Hagood Phone: 239 - 2540

## 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

### Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, 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  
BENJAMIN D. BAIZE;  
RN103704169**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2010-0198-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 Benjamin D. Baize ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a landscape irrigation business from his personal residence located at 760 Wind Trail, Del Rio, Val Verde County, Texas (the "Business").
2. Respondent holds and maintains landscape irrigator license No. 5638, issued by the TCEQ on September 12, 2008. Respondent sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and is required to be licensed under 30 TEX. ADMIN. CODE ch. 30. Therefore, Respondent 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 an investigation conducted on December 17, 2009, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to comply with local requirements, ordinances and regulations designed to protect the public water supply. Specifically, Respondent repaired irrigation systems without obtaining a permit at the following seven locations in Del Rio, Val Verde County, Texas: 500 Farhills, 206 Farhills, 305 Bolner, 205 Ceniza Ridge, 2003 North Main, 100 Mesquite and 320 Griner;
  - b. Failed to properly repair landscape irrigation systems. Specifically, Respondent did not properly install backflow prevention devices and have them inspected at the following locations in Del Rio, Val Verde County, Texas: 500 Farhills, 206 Farhills, 305 Bolner, 205 Ceniza Ridge, 2003 North Main and 320 Griner; and
  - c. Failed to include an irrigator's stamp and use a scale on an irrigation plan. Specifically, Respondent did not stamp and use a scale on the irrigation plan for the system installed at 100 Mesquite, Del Rio, Val Verde County, Texas.

4. Respondent received notice of the violations on or about January 2, 2010.
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 Benjamin D. Baize" (the "EDPRP") in the TCEQ Chief Clerk's office on June 9, 2010.
6. By letter dated June 9, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on June 11, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent 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 Findings of Fact Nos. 1 and 2, Respondent 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.a., Respondent failed to comply with local requirements, ordinances and regulations designed to protect the public water supply, in violation of 30 TEX. ADMIN. CODE §§ 344.24(a) and 344.35(d)(2).
3. As evidenced by Finding of Fact No. 3.b., Respondent failed to properly repair landscape irrigation systems, in violation of 30 TEX. ADMIN. CODE §§ 344.35(d)(4) and 344.52(a).
4. As evidenced by Finding of Fact No. 3.c., Respondent failed include an irrigator's stamp and use a scale on an irrigation plan, in violation of 30 TEX. ADMIN. CODE §§ 344.61(c)(1) and (8).
5. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer 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 Respondent and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
8. An administrative penalty in the amount of four thousand five hundred sixty-one dollars (\$4,561.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. 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. Respondent is assessed an administrative penalty in the amount of four thousand five hundred sixty-one dollars (\$4,561.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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: Benjamin D. Baize Docket No. 2010-0198-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. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall cease installing irrigation systems prior to obtaining permits from the local government authorities, in accordance with the requirements of 30 TEX. ADMIN. CODE §§ 344.24 and 344.35;
  - b. Within 30 days after the effective date of this Order, Respondent shall:
    - i. Properly install and test backflow prevention devices prior to placing irrigation systems in service, in accordance with 30 TEX. ADMIN. CODE §§ 344.35 and 344.52;
    - ii. Begin providing the irrigator's stamp and a scale for drawings on all irrigation plans, in accordance with 30 TEX. ADMIN. CODE § 344.61; and
  - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Tracy Miller  
Landscape Irrigation Program, MC 174  
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 Respondent. Respondent 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 Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent 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 Respondent if the Executive Director determines that Respondent 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.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF SHARESASA Y. ALEXANDER**

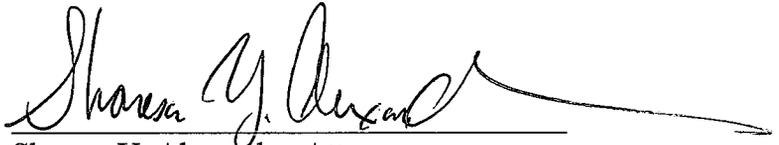
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Sharesa Y. Alexander. 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 Benjamin D. Baize” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 9, 2010.

The EDPRP was mailed to Benjamin D. Baize at his last known address on June 9, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Respondent received notice of the EDPRP on June 11, 2010, as evidenced by the signature on the card.

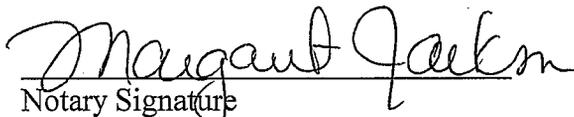
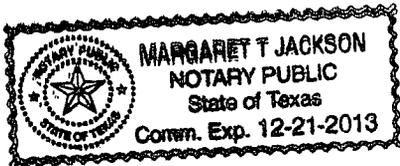
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Sharesa Y. Alexander, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Sharesa Y. Alexander, 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 16 day of July, A.D., 2010.

  
Notary Signature