EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1015-LII-E **TCEQ ID:** RN104881222 **CASE NO.:** 39913

RESPONDENT NAME: Mark E. Rohde dba Turf Masters

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	X OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Turf Masters, 220 Deer Creek Drive, Boerne, Kendall County

TYPE OF OPERATION: Landscaping business

SMALL BUSINESS: X **Yes** __ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received on November 19, 2009, alleging that the Respondent was advertising without a license. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 8, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Rebecca Johnson, Enforcement Division, Enforcement Team 5, MC R-14, (361) 825-3420; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Mark Rohde, Owner, Turf Masters, P.O. Box 2088, Boerne, Texas 78006
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: X Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** November 19, 2009 **Date of Investigation Relating to this Case:** November 19, 2009 **Date of NOV/NOE Relating to this Case:** June 1, 2010 (NOE) **Background Facts:** This was a complaint investigation. **WATER** Failed to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license. Specifically, the Respondent advertised irrigation services via "www.turfmasterstx.com and Guadalupe Valley Telephone Company Yellow Pages without a valid irrigator license [30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2) and TEX. WATER CODE § 37.003].	**Total Assessed:** $500 **Total Deferred:** $100 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $400 **Person Compliance History Classification** __ **High** __ **Average** __ **Poor** **Site Compliance History Classification** __ **High** __ **Average** __ **Poor** **Major Source:** __ Yes X No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent has implemented the following corrective measures: a. On July 22, 2010, the Respondent provided a written agreement with a licensed irrigator, Josue Maldonado, License No. LI0006391, to provide irrigation services for the Respondent; and b. On July 22, 2010, the website "www.turfmasterstx.com" was updated to include License No. LI0006391, and measures were implemented to include the license number in the next publication of the Guadalupe Valley Telephone Company Yellow Pages.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	7-Jun-2010				
PCW	6-Aug-2010	Screening	21-Jun-2010	EPA Due	N/A

RESPONDENT/FACILITY INFORMATION

Respondent	Mark E. Rohde dba Turf Masters		
Reg. Ent. Ref. No.	RN104881222		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	39913	No. of Violations	1
Docket No.	2010-1015-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rebecca Johnson
		EC's Team	Enforcement Team 5
Admin. Penalty $ Limit Minimum	$0	Maximum	$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	*Subtotal 1*	$500
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	$7
Approx. Cost of Compliance	$200

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7	*Final Subtotal*	$500
OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0%	*Adjustment*	$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	$500
STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty*	$500
DEFERRAL 20.0% Reduction *Adjustment*	-$100

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	$400

Screening Date 21-Jun-2010 **Docket No.** 2010-1015-LII-E **PCW**

Respondent Mark E. Rohde dba Turf Masters

Policy Revision 2 (September 2002)

Case ID No. 39913

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104881222

Media [Statute] Irrigators

Enf. Coordinator Rebecca Johnson

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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to Compliance History.

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

Screening Date	21-Jun-2010	**Docket No.** 2010-1015-LII-E	**PCW**
Respondent	Mark E. Rohde dba Turf Masters		*Policy Revision 2 (September 2002)*
Case ID No.	39913		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN104881222		
Media [Statute]	Irrigators		
Enf. Coordinator	Rebecca Johnson		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(b) and 344.30(a)(2), and Tex. Water Code § 37.003

Violation Description Failed to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license. Specifically, the Respondent advertised irrigation services via "www.turfmasterstx.com" and Guadalupe Valley Telephone Company Yellow Pages without a valid irrigator license.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $2,250

$250

Violation Events

Number of Violation Events: 2 — 214 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

Two single events are recommended based on the two documented advertisements.

Good Faith Efforts to Comply

0.0% Reduction — $0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent completed corrective actions on July 22, 2010, which was after the initial settlement offer on July 19, 2010.

Violation Subtotal $500

Economic Benefit (EB) for this violation

Estimated EB Amount $7

Statutory Limit Test

Violation Final Penalty Total $500

This violation Final Assessed Penalty (adjusted for limits) $500

Economic Benefit Worksheet

Respondent Mark E. Rohde dba Turf Masters
Case ID No. 39913
Reg. Ent. Reference No. RN104881222
Media Irrigators
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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)	$200	19-Nov-2009	22-Jul-2010	0.67	$7	n/a	$7

Notes for DELAYED costs: Estimated cost to develop a written agreement with a licensed individual and the estimated cost to implement measures to update advertisements to include the license number. The date required is the date of the record review investigation. The final date is the date corrective actions were completed.

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: $200

TOTAL: $7

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602981441	ROHDE, MARK E.	Classification:	Rating:
Regulated Entity:	RN104881222	ROHDE, MARK E.	Classification:	Site Rating:

ID Number(s):
Location: 220 Deer Creek Drive in Boerne, Kendall County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: June 11, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 11, 2005 to June 11, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Rebecca Johnson Phone: (361) 825-3420

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/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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
MARK E. ROHDE DBA TURF	§	
MASTERS	§	
RN104881222	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1015-LII-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Mark E. Rohde dba Turf Masters ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a landscaping business at 220 Deer Creek Drive in Boerne, Kendall County, Texas.

2. TCEQ has general authority to regulate the design and installation of landscape irrigation systems, and the licensing of landscape irrigators and installers, pursuant to TEX. OCCUPATIONS CODE ch. 1903.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 6, 2010.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Hundred Dollars ($500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid Four Hundred Dollars ($400) of the administrative penalty and One Hundred Dollars ($100) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent entered a written contract with a licensed irrigator have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent has implemented the following corrective measures:

   a. On July 22, 2010, the Respondent provided a written agreement with a licensed irrigator, Josue Maldonado, License No. LI0006391, to provide irrigation services for the Respondent; and

   b. On July 22, 2010, the website "www.turfmasterstx.com" was updated to include License No. LI0006391, and measures were implemented to include the license number in the next publication of the Guadalupe Valley Telephone Company Yellow Pages.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

The Respondent is alleged to have failed to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license, in violation of 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2), and TEX. WATER CODE § 37.003, as documented during a record review conducted on November 19, 2009. Specifically, the Respondent advertised irrigation services via "www.turfmasterstx.com and Guadalupe Valley Telephone Company Yellow Pages without a valid irrigator license.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Mark E. Rohde dba Turf Masters, Docket No. 2010-1015-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.

3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

John Sadlier
For the Executive Director

10/7/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Mark Rohde
Signature

9-6-10
Date

Mark Rohde
Name (Printed or typed)
Authorized Representative of
Mark E. Rohde dba Turf Masters

Owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.