

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0902-LII-E TCEQ ID RN103281267 CASE NO. 37775
RESPONDENT NAME: MARK WILLIAM DAILEY

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
<p>SITE WHERE VIOLATION(S) OCCURRED: 25661 Highway 281 North, Suite 100, San Antonio, Bexar County; 13511 Cassia Way Street, San Antonio, Bexar County; and 2808 Kingsland Circle, Schertz, Guadalupe County</p> <p>TYPE OF OPERATION: Landscape irrigation business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Two complaints were received, alleging (1) the Respondent installed an irrigation system and will not honor the warranty; and (2) the Respondent failed to install an irrigation system providing complete coverage. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: The complainants have not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired May 24, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="padding-left: 20px;">TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400</p> <p style="padding-left: 20px;">TCEQ Enforcement Coordinator: Ms. Danielle Porras, Water Enforcement Section, MC 128, (512) 239-2602</p> <p style="padding-left: 20px;">TCEQ Regional Contact: Ms. Lynn Bumguardner, San Antonio Regional Office, MC R-13, (210) 403-4050</p> <p style="padding-left: 20px;">Respondent: Mr. Mark William Dailey, 25661 Highway 281 North, Suite 100, San Antonio, Texas 78258</p> <p style="padding-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

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>Dates of Complaints Relating to this Case: July 8, 2008 and January 23, 2009</p> <p>Dates of Investigation Relating to this Case: July 11, 2008 and January 26, 2010 (complaint investigations); March 18, 2009 and April 9, 2009 (records reviews)</p> <p>Dates of NOEs Relating to this Case: March 23, 2009 and May 15, 2009</p> <p>Background Facts: The EDRP was filed on November 2, 2009. According to the return receipt "green card," the Respondent received notice of the EDRP on November 3, 2009. The EDFARP was filed on December 9, 2009. According to the return receipt "green card," the Respondent received notice of the EDFARP on December 10, 2009. The EDSARP was filed on March 1, 2010. According to the return receipt "green card," the Respondent received notice of the EDSARP on March 2, 2010. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent's irrigator license expires on December 31, 2011.</p> <p>LII:</p> <ol style="list-style-type: none"> 1. Failed to adhere to terms of the warranty for the installation of a new irrigation system [30 TEX. ADMIN. CODE § 344.72]. 2. Failed to note on the irrigation plan that the irrigation system did not provide complete coverage of the area to be irrigated [30 TEX. ADMIN. CODE § 344.61(b)]. 3. Failed to include in all advertisements the irrigator's license number in the form of "LI_____" [30 TEX. ADMIN. CODE § 344.70(b)]. 	<p>Total Assessed: \$852</p> <p>Total Deferred: \$0</p> <p style="padding-left: 20px;"><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: \$852</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>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. Within 30 days: <ol style="list-style-type: none"> a. Adhere to the terms of the warranty at the Kingsland Circle site and ensure that the warranty is honored for all new irrigation systems installed by Respondent; b. Note in red on the irrigation plan for each Site the location of all non-irrigated areas, and provide to each irrigation system's owner an irrigation plan indicating the actual installation of the system at each Site; and c. Ensure that the irrigator's license number in the form of "LI0004576" is displayed in all Respondent's advertisements. 2. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	26-May-2009			
	PCW	9-Sep-2009	Screening	11-Jun-2009	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Mark William Dailey
Reg. Ent. Ref. No.	RN103281267
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37775	No. of Violations	3
Docket No.	2009-0902-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		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	\$775
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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.

Compliance History	10.0% Enhancement	Subtotals 2, 3, & 7	\$77
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Notes	Enhancement due to two NOVs with same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$119	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$950	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$852
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$852
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$852
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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.
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PAYABLE PENALTY	\$852
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Screening Date 11-Jun-2009

Docket No. 2009-0902-LII-E

PCW

Respondent Mark William Dailey

Policy Revision 2 (September 2002)

Case ID No. 37775

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103281267

Media [Statute] Irrigators

Enf. Coordinator Danielle Porras

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (<i>number of NOV's meeting criteria</i>)	2	10%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 10%

>> 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

Enhancement due to two NOV's with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 11-Jun-2009 **Docket No.** 2009-0902-LII-E **PCW**
Respondent Mark William Dailey *Policy Revision 2 (September 2002)*
Case ID No. 37775 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN103281267
Media [Statute] Irrigators
Enf. Coordinator Danielle Porras

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="0%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>		<input type="text"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

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

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/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

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 Mark William Dailey
Case ID No. 37775
Reg. Ent. Reference No. RN103281267
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	\$150	27-Feb-2008	13-Mar-2009	1.04	\$1	\$10	\$11
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

Estimated cost to repair a valve and two sprinkler heads. The Date Required is the installation date of the irrigation system and the Final Date is date of the record review.

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

\$150

TOTAL

\$11

Screening Date 11-Jun-2009 Docket No. 2009-0902-LII-E PCW

Respondent Mark William Dailey Policy Revision 2 (September 2002)

Case ID No. 37775 PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103281267

Media [Statute] Irrigators

Enf. Coordinator Danielle Porras

Violation Number 2 Rule Cite(s) 30 Tex. Admin. Code § 344.61(b)

Violation Description Failed to note on the irrigation plan that the irrigation system did not provide complete coverage of the area to be irrigated. Specifically, the Respondent did not note non-irrigated areas on the irrigation plans for systems Respondent provide complete coverage for irrigation systems installed at the Kingsland Circle site and at 13511 Cassia Way Street in San Antonio, Bexar County, Texas (the "Cassia Way" site) (collectively the "Sites").

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

Table with columns: Release, Harm (Major, Moderate, Minor), Actual, Potential, Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

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

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 2 Number of violation days 63

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'single event' is marked with an 'x'.

Violation Base Penalty \$500

Two single events are recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

Table with rows: Extraordinary, Ordinary, N/A. 'N/A' is marked with an 'x'.

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$104 Violation Final Penalty Total \$550

This violation Final Assessed Penalty (adjusted for limits) \$550

Economic Benefit Worksheet

Respondent Mark William Dailey
Case ID No. 37775
Reg. Ent. Reference No. RN103281267
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	\$350	1-Mar-2006	9-Apr-2009	3.11	\$4	\$73	\$76
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$350	27-Feb-2008	9-Apr-2009	1.12	\$1	\$26	\$27
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

Estimated cost to modify the irrigation system to attain 100% coverage. The Dates Required are the installation dates of the irrigation systems and the Final Dates are the date of the record review.

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

\$700

TOTAL

\$104

Screening Date 11-Jun-2009 **Docket No.** 2009-0902-LII-E **PCW**
Respondent Mark William Dailey *Policy Revision 2 (September 2002)*
Case ID No. 37775 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN103281267
Media [Statute] Irrigators
Enf. Coordinator Danielle Porras

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	x	Percent <input type="text" value="1%"/>

Matrix Notes

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	x

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

Notes

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 Mark William Dailey
Case ID No. 37775
Reg. Ent. Reference No. RN103281267
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	9-Apr-2009	5-Feb-2010	0.83	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to update the website to include the valid irrigator's license number. The Date Required is the record review date and the Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

\$4

Compliance History Report

Customer/Respondent/Owner-Operator: CN601801897 Dailey, Mark William Classification: Rating:
Regulated Entity: RN103281267 Dailey, Mark William Classification: Site Rating:
ID Number(s): LANDSCAPE IRRIGATION LICENSING LICENSE LI0004576
Location: 25661 N HWY 281 # 100, SAN ANTONIO, TX, 78258
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: February 03, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 03, 2005 to February 03, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Danielle Porras Phone: (512) 239-2602

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 judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 09/29/2008 (686071)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter F 344.96
Description: Failure by a licensed irrigator to present the customer, on all installations of new irrigation systems (i.e. excluding remodeling and renovation), a written statement of guarantees for materials and labor furnished in the installation of the irrigation system and honor the warranty. Specifically, during a record review investigation initiated on 08/08/08, it was documented that Mr. Mark W. Dailey, Dailey Sprinkler Systems, Inc., Landscape Irrigator License Number 4576 installed a irrigation system at the site location of 2808 Kingsland Circle, Schertz, Bexar County, Texas and will not honor the warranty.
Date: 03/06/2009 (735674)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter F 344.95(c)
Description: Failure to note on the written agreement those areas which were excluded and not part of the irrigation coverage. Specifically, during the record review investigation initiated on 02/17/2009 it was documented by Mr. Richard Allen, TCEQ Compliance Support Division, that Mr. Mark Dailey, Irrigation License Number 4576, Dailey Sprinkler Systems, Inc. did in fact fail to provide 100% moisture coverage as per the contract dated 12/02/2005.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter G 344.70(b)
Description: Failure to include in all advertisements the irrigator's license number in the form of "LI____." Specifically, during the investigation on 02/17/2009, it was documented by Mr. Richard Allen, TCEQ Compliance Support Division, that Mr. Mark Dailey, Irrigation License Number 4576, Dailey Sprinklers, failed to properly display his landscape irrigation license number in his Yellowpages.com advertisement.
- 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
MARK WILLIAM DAILEY;
RN103281267**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-0902-LII-E**

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Second 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 Mark William Dailey (“Respondent”).

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

FINDINGS OF FACT

1. Respondent owns and operates a landscape irrigation company at 25661 Highway 281 North, Suite 100 in San Antonio, Bexar County, Texas (the “Facility”).
2. Respondent holds and maintains landscape irrigator license no. LI0004576, issued by the TCEQ on January 14, 2009, and sells, designs, installs, maintains, alters, repairs, and/or services landscape irrigation systems. 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 a record review conducted on March 18, 2009, a TCEQ investigator documented that Respondent failed to adhere to terms of the warranty for the installation of a new irrigation system. Specifically, the Respondent installed an irrigation system at 2808 Kingsland Circle, Schertz, Guadalupe County, Texas (the “Kingsland Circle” site), and did not adhere to the warranty by failing to repair a valve and two sprinkler heads.
4. Respondent received notice of the violation described in paragraph 3 on or about March 28, 2009.

5. During a record review conducted on April 9, 2009, a TCEQ investigator documented that Respondent:
 - a. Failed to note on the irrigation plan that the irrigation system did not provide complete coverage of the area to be irrigated. Specifically, the Respondent did not note non-irrigated areas on the irrigation plans for systems Respondent installed at the Kingsland Circle site and at 13511 Cassia Way Street in San Antonio, Bexar County, Texas (the “Cassia Way” site) (collectively the “Sites”); and
 - b. Failed to include in all advertisements the irrigator's license number in the form of “LI_____.” Specifically, the Respondent was advertising via the website yellowpages.com without displaying his license number in the form of “LI0004567.”
6. Respondent received notice of the violations described in paragraph 5 on or about May 20, 2009.
7. 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 Mark William Dailey” (the “EDPRP”) in the TCEQ Chief Clerk’s office on November 2, 2009.
8. By letter dated November 2, 2009 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 November 3, 2009, as evidenced by the signature on the card.
9. 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.
10. 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 Mark William Dailey” (the “EDFARP”) in the TCEQ Chief Clerk’s office on December 9, 2009.
11. By letter dated December 9, 2009 sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the return receipt “green card,” Respondent received notice of the EDFARP on December 10, 2009, as evidenced by the signature on the card.
12. More than 20 days have elapsed since Respondent received notice of the EDFARP, provided by the Executive Director. Respondent failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

13. The Executive Director filed the “Executive Director’s Second 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 Mark William Dailey” (the “EDSARP”) in the TCEQ Chief Clerk’s office on March 1, 2010.
14. By letter dated March 1, 2010 sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDSARP. According to the return receipt “green card,” Respondent received notice of the EDSARP on March 2, 2010, as evidenced by the signature on the card.
15. More than 20 days have elapsed since Respondent received notice of the EDSARP, provided by the Executive Director. Respondent failed to file an answer to the EDSARP, 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, Respondent 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, Respondent failed to adhere to terms of a warranty for the installation of a new irrigation system, in violation of 30 TEX. ADMIN. CODE § 344.72.
3. As evidenced by Finding of Fact No. 5.a., Respondent failed to note on irrigation plans that the irrigation system did not provide complete coverage of the area to be irrigated, in violation of 30 TEX. ADMIN. CODE § 344.61(b).
4. As evidenced by Finding of Fact No. 5.b., Respondent failed to include in all advertisements the irrigator's license number in the form of “LI_____,” in violation of 30 TEX. ADMIN. CODE § 344.70(b).
5. As evidenced by Finding of Fact Nos. 7 and 8, 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. 9, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.

7. As evidenced by Finding of Fact Nos. 10 and 11, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 12, Respondent failed to file a timely answer to 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 Respondent and assess the penalty recommended by the Executive Director.
9. As evidenced by Finding of Fact Nos. 13 and 14, the Executive Director timely served Respondent with proper notice of the EDSARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
10. As evidenced by Finding of Fact No. 15, Respondent failed to file a timely answer to the EDSARP, 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.
11. 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.
12. An administrative penalty in the amount of eight hundred fifty-two dollars (\$852.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. 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 eight hundred fifty-two dollars (\$852.00) for violations of state statutes and the 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: Mark William Dailey; Docket No. 2009-0902-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. Within 30 days after the effective date of this Order, Respondent shall:
 - i. Adhere to the terms of the warranty at the Kingsland Circle site and ensure that the warranty is honored for all new irrigations systems installed by Respondent, in accordance with 30 TEX. ADMIN. CODE § 344.72;
 - ii. Note in red on the irrigation plan for each Site the location of all non-irrigated areas, in accordance with 30 TEX. ADMIN. CODE § 344.61(a)(3) and (b), and provide to each irrigation system's owner an irrigation plan indicating the actual installation of the system at each Site, pursuant to 30 TEX. ADMIN. CODE § 344.63(4); and
 - iii. Ensure that the irrigator's license number in the form of "LI0004567" is displayed in all advertisements.
 - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.iii.

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 fines and imprisonment for knowing violations."

The certification shall be submitted 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:

Sandi Mota, Landscape Irrigation Section
Texas Commission on Environmental Quality, MC 178
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.
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 this 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 GARY K. SHIU

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

“My name is Gary K. Shiu. 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 Mark William Dailey” (the “EDPRP”) was filed with the Office of the Chief Clerk on November 2, 2009.

The EDPRP was mailed to Respondent at his last known address on November 2, 2009, 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 November 3, 2009, 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 to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

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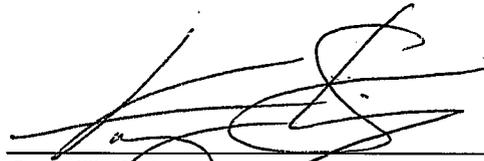
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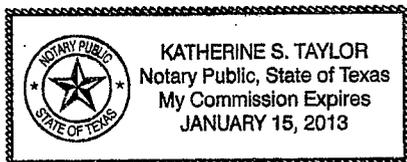
More than 20 days have elapsed since Respondent received notice of the EDSARP. Respondent failed to file an answer to the EDSARP, failed to request a hearing, and failed to schedule a settlement conference."



Gary K. Shiu, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, 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 6 day of April, 2010, A.D., 2010.



Notary Signature