

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1674-LII-E TCEQ ID RN105713853 CASE NO. 38531
RESPONDENT NAME: SHANE HARKIN

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 OCCURRED: Austin, Travis County</p> <p>TYPE OF OPERATION: landscaping business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that the Respondent advertised "Irrigation" on the website www.lawnsculptors.org and did not include a licensed irrigation number in the advertisement. There is no record of additional pending enforcement actions regarding this respondent.</p> <p>INTERESTED PARTIES: The complainant has 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 April 26, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="padding-left: 20px;">TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400</p> <p style="padding-left: 20px;">TCEQ Enforcement Coordinator: Ms. Heather Brister, Water Enforcement Section, MC R-9, (254) 761-3034</p> <p style="padding-left: 20px;">TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929</p> <p style="padding-left: 20px;">Respondent: Mr. Shane Harkin, P.O. Box 80281, Austin, Texas 78708</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>Date of Complaint Relating to this Case: April 8, 2009</p> <p>Dates of Investigation Relating to this Case: April 9, 2009 and July 6, 2009</p> <p>Date of NOE Relating to this Case: September 9, 2009</p> <p>Background Facts: The EDRP was filed on February 12, 2010, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United Postal Service returned the EDRP sent by certified mail as "unclaimed." The first class mail has not been returned. The Respondent failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: No outstanding Technical Requirements. The Respondent does not have an irrigator license.</p> <p>LII: Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration [30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251].</p>	<p>Total Assessed: \$250</p> <p>Total Deferred: \$0 <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: \$250</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>Corrective Action Taken:</p> <p>The Executive Director recognizes that the Respondent is no longer advertising irrigation services on the website www.lawnsculptors.org.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	21-Sep-2009			
	PCW	8-Jan-2010	Screening	9-Oct-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Shane Harkin				
Reg. Ent. Ref. No.	RN105713853				
Facility/Site Region	11-Austin	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38531	No. of Violations	1		
Docket No.	2009-1674-LII-E	Order Type	1660		
Media Program(s)	Irrigators	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Heather Brister		
		EC's Team	Enforcement Team 1		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$2,500	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
---	-------------------	-------

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	\$3	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$150	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$250
-----------------------------	-----------------------	-------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	No good faith reduction is offered when a default order is recommended.
--------------	---

Final Penalty Amount	\$250
-----------------------------	-------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$250
-----------------------------------	-------------------------------	-------

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

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

Notes	Deferral not offered for non-expedited settlement.
--------------	--

PAYABLE PENALTY	\$250
------------------------	-------

Screening Date 9-Oct-2009

Docket No. 2009-1674-LII-E

PCW

Respondent Shane Harkin

Policy Revision 2 (September 2002)

Case ID No. 38531

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105713853

Media [Statute] Irrigators

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

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

Screening Date	9-Oct-2009	Docket No.	2009-1674-LII-E	PCW
Respondent	Shane Harkin	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	38531	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN105713853			
Media [Statute]	Irrigators			
Enf. Coordinator	Heather Brister			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code §§ 30.5(b) and 344.30(a)(2), Tex. Water Code § 37.003, and Tex. Occupations Code § 1903.251			
Violation Description	Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration, as documented during a record review conducted on July 6, 2009. Specifically, the Respondent advertised "irrigation" at the website of www.lawnsculptors.org without having a valid irrigator license.			
Base Penalty	\$2,500			

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.				
					Adjustment <input type="text" value="\$2,250"/>

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="46"/>	Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>		Violation Base Penalty <input type="text" value="\$250"/>
	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="checkbox"/>		
	One single event is recommended based on documentation of the violation during a record review conducted on July 6, 2009.			

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="checkbox"/>	(mark with x)	
Notes	No good faith in default situation.		
			Violation Subtotal <input type="text" value="\$250"/>

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

Estimated EB Amount	<input type="text" value="\$3"/>	Violation Final Penalty Total	<input type="text" value="\$250"/>
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$250"/>	

Economic Benefit Worksheet

Respondent Shane Harkin
Case ID No. 38531
Reg. Ent. Reference No. RN105713853
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)	\$150	9-Apr-2009	21-Aug-2009	0.37	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to remove the advertisement for irrigation from the website. Date Required is the date the violation was first documented. Final Date is the 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

\$150

TOTAL

\$3

Compliance History Report

Customer/Respondent/Owner-Operator: CN603466863 HARKIN, SHANE Classification: Rating:
Regulated Entity: RN105713853 HARKIN SHANE Classification: Site Rating:
ID Number(s):
Location: PO BOX 80281, AUSTIN, TX, 78708
TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: October 06, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 06, 2004 to October 06, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Heather Brister Phone: 254-761-3034

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.)
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
SHANE HARKIN;
RN105713853**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1674-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. The respondent made the subject of this Order is Shane Harkin (“Mr. Harkin”).

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

FINDINGS OF FACT

1. Mr. Harkin owns and operates a landscaping business located in Austin, Travis County, Texas (the “Business”).
2. Mr. Harkin sells, designs, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Harkin 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 July 6, 2009, a TCEQ Central Office investigator documented that Mr. Harkin failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration. Specifically, Mr. Harkin advertised “irrigation” on the website www.lawnsculpators.org without possessing a valid irrigator license.
4. Mr. Harkin received notice of the violation on or about September 14, 2009.
5. The Executive Director recognizes that on August 21, 2009, Mr. Harkin ceased advertising “irrigation” services on the website www.lawnsculpators.org.

6. 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 Shane Harkin” (the “EDPRP”) in the TCEQ Chief Clerk’s office on February 12, 2010.
7. By letter dated February 12, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Harkin with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Harkin received notice of the EDPRP.
8. More than 20 days have elapsed since Mr. Harkin received notice of the EDPRP, provided by the Executive Director. Mr. Harkin failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Harkin is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Harkin failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration, in violation of 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.30(a)(2), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251.
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Harkin with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 8, Mr. Harkin 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 Mr. Harkin and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Harkin for violations of the Texas Water Code within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two hundred fifty dollars (\$250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Harkin is assessed an administrative penalty in the amount of two hundred fifty dollars (\$250.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Harkin'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: Shane Harkin; Docket No. 2009-1674-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Harkin. Mr. Harkin is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
4. If Mr. Harkin fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Harkin's failure to comply is not a violation of this Order. Mr. Harkin shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Harkin shall notify the Executive Director within seven days after Mr. Harkin becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Harkin shall be made in writing

to the Executive Director. Extensions are not effective until Mr. Harkin receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to Mr. Harkin if the Executive Director determines that Mr. Harkin has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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.

Shane Harkin
Docket No. 2009-1674-LII-E
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

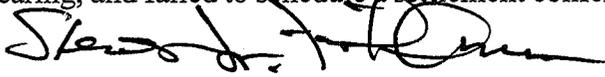
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Steven M. Fishburn. 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 Shane Harkin” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 12, 2010.

The EDPRP was mailed to Mr. Harkin at his last known address on February 12, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Harkin received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

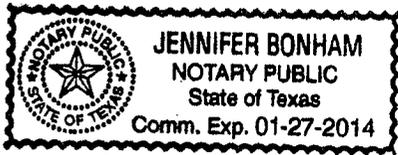
More than 20 days have elapsed since Mr. Harkin received notice of the EDPRP. Mr. Harkin failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 19 day of April, A.D., 2010.



Notary Without Bond


Notary Signature