

Executive Summary – Enforcement Matter – Case No. 40951
Thomas L. Barnes, Jr. d/b/a The GreenHouse Center
RN103392627
Docket No. 2011-0031-LII-E

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
LII

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
1778 Farm-to-Market Road 1942, Crosby, Harris County

Type of Operation:
landscaping business

Other Significant Matters:

Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: July 8, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$312

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$156

Total Due to General Revenue: \$156

Payment Plan: 1 payment of \$156

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – N/A

Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): August 24, 2009
Complaint Information: Alleged that Respondent installed an irrigation system in which the irrigation heads were installed outside the property line into the utility easement, and failed to provide complete coverage on the south side of the house.

Date(s) of Investigation: March 11, 2010; December 6, 2010

Date(s) of NOV(s): March 12, 2010

Date(s) of NOE(s): December 8, 2010

Violation Information

Failed to include the following statement in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us" [30 TEX. ADMIN. CODE § 344.71(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On January 31, 2011, Respondent provided documentation that the required statement is now included on all Respondent's written estimates, proposals, bids, and invoices relating to the installation or repair of irrigation systems.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: April 19, 2011

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: June 10, 2011

Contact Information

TCEQ Attorneys: Sharesa Y. Alexander, Litigation Division, (512) 239-3503
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: James Nolan, Air Enforcement Section, (512) 239-6634

TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Thomas L. Barnes, Jr., 1778 Farm-to-Market Road 1942, Crosby, Harris 77532

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Dec-2010	Screening	4-Jan-2011	EPA Due	
	PCW	23-Feb-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Thomas L. Barnes, Jr. dba The GreenHouse Center				
Reg. Ent. Ref. No.	RN103392627				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	40951	No. of Violations	1	
Docket No.	2011-0031-LII-E	Order Type	1660	
Media Program(s)	Irrigators	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	James Nolan	
		EC's Team	Enforcement Team 4	
Admin. Penalty \$ Limit Minimum		\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$12
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Notes	Enhancement for one same/similar NOV.
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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	\$56	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$50	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$262
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OTHER FACTORS AS JUSTICE MAY REQUIRE	19.1%	Adjustment	\$50
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.
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Final Penalty Amount	\$312
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$312
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$312
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Screening Date 4-Jan-2011

Docket No. 2011-0031-LII-E

PCW

Respondent Thomas L. Barnes, Jr. dba The GreenHouse Cente

Policy Revision 2 (September 2002)

Case ID No. 40951

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103392627

Media [Statute] Irrigators

Enf. Coordinator James Nolan

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one same/similar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 4-Jan-2011

Docket No. 2011-0031-LII-E

PCW

Respondent Thomas L. Barnes, Jr. dba The GreenHouse Center

Policy Revision 2 (September 2002)

Case ID No. 40951

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103392627

Media [Statute] Irrigators

Enf. Coordinator James Nolan

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 344.71(b)

Violation Description Failed to include the following statement in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: www.tceq.state.tx.us." Specifically, the Respondent failed to include the required statement on an invoice for the installation of an irrigation system at 15718 East Astern Drive, Crosby, Texas.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

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

Adjustment \$2,250

\$250

Violatic 50 6/30/2009 1/31/2011

Number of Violation Events 1 29 Number of violation days

Table for frequency selection: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked 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 \$56

Violation Final Penalty Total \$313

This violation Final Assessed Penalty (adjusted for limits) \$313

Economic Benefit Worksheet

Respondent Thomas L. Barnes, Jr. dba The GreenHouse Center
Case ID No. 40951
Reg. Ent. Reference No. RN103392627
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
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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]				0.00	\$0	\$0	\$0
Other (as needed)	\$50	30-Jun-2009	31-Jan-2011	2.51	\$6	\$50	\$56

Notes for AVOIDED costs

Estimated costs to begin providing the statement on all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system. The date required is the date of the installation and the final date is the date of compliance.

Approx. Cost of Compliance \$50

TOTAL \$56

Compliance History

Customer/Respondent/Owner-Operator: CN601912736 BARNES, THOMAS L. JR. Classification: Rating:
Regulated Entity: RN103392627 BARNES, THOMAS L. JR. Classification: Site Rating:
ID Number(s): LANDSCAPE IRRIGATION LICENSING LICENSE LI0008768
Location: 1778 Farm-to-Market Road 1942, Crosby, Texas 77532
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: January 04, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 04, 2006 to January 04, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: James Nolan Phone: (512) 239-6634

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.)

Date: 03/12/2010 (795428)

- Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter F 344.63(2)
Description: Failure to provide a maintenance checklist to the systems owner or owner's representative.
- Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter F 344.63(2)(B)
Description: Failure to provide a seasonal watering schedule.
- Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter F 344.63(3)
Description: Failure to affix a permanent sticker which contains the irrigators name, license number, company name, telephone number and dates of the warranty period to the inside of the controller.
- Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter F 344.63(4)
Description: Failure to provide an "As Built" plan indicating the actual installation of the system must be provided to the irrigation system's owner or owner representative.
- Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 344, SubChapter G 344.71(b)
Description: Failure to include in all written estimates, proposals, bids and invoices the irrigators name, license number, business address, telephone number and the required TCEQ statement.

- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
THOMAS L. BARNES, JR. D/B/A
THE GREENHOUSE CENTER;
RN103392627**

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§
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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-0031-LII-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Thomas L. Barnes, Jr. d/b/a The GreenHouse Center ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCC. CODE ch 1903. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates a landscaping business located at 1778 Farm-to-Market Road 1942 in Crosby, Harris County, Texas (the "Business"). Respondent holds TCEQ irrigator license No. LII0008768 and sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems and is required to be licensed under 30 TEX. ADMIN. CODE ch. 30. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of three hundred twelve dollars (\$312.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one hundred fifty-six dollars (\$156.00) of the administrative penalty. The remaining amount of one hundred fifty-six dollars (\$156.00) of the administrative penalty shall be payable in one (1) payment of one hundred fifty-six

dollars (\$156.00), and shall be paid within 30 days after the effective date of this Agreed Order. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that on January 31, 2011, Respondent provided documentation that the required statement is now included on all Respondent's written estimates, proposals, bids, and invoices relating to the installation or repair of irrigation systems.
9. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

1. During a record review conducted on December 6, 2010, a TCEQ Central Office investigator documented that Respondent failed to include the following statement in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system: Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.texas.gov, in violation of 30 TEX. ADMIN. CODE § 344.71(b).
2. Respondent received notice of the violation on or about December 13, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Thomas L. Barnes, Jr. d/b/a The GreenHouse Center, Docket No. 2011-0031-LII-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

1. All relief not expressly granted in this Agreed Order is denied.
2. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Business operations referenced in this Agreed Order.
3. If Respondent fails to comply with any of the Ordering Provisions in this Agreed 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 Agreed 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.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed 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.
5. This Agreed Order, issued by the Commission, shall not be admissible against 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.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic

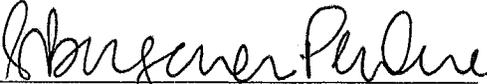
transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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



For the Executive Director

10/12/2011

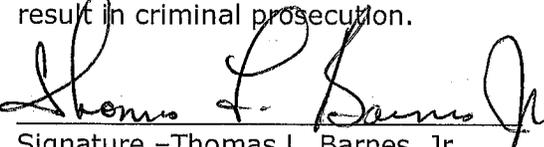
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Thomas L. Barnes, Jr. d/b/a The GreenHouse Center, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature -Thomas L. Barnes, Jr.

10/10/2011
Date