

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2010-0311-LII-E**

**RN105074900**

**CASE NO. 39222**

**RESPONDENT NAME: CLAYTON C. WHITSON**

ORDER TYPE:		
<input type="checkbox"/> 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

**SITES WHERE VIOLATION(S) OCCURRED:** 12590 FM 2410, Belton, Bell County; 304 Bareback Trail, Harker Heights, Bell County

**TYPE OF OPERATION:** landscaping business

**SMALL BUSINESS:**  Yes  No  N/A

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging improper installation of a landscape irrigation system. There is no record of additional pending enforcement actions regarding this respondent.

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

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

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Tammy L. Mitchell, Litigation Division, MC 175, (512) 239-3400  
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Roshondra Lowe, Waste Enforcement Section, MC R-12, (713) 767-3553

**TCEQ Regional Contact:** Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001

**Respondent:** Clayton C. Whitson, 12590 FM 2410, Belton, Texas 76513

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b> November 13, 2009</p> <p><b>Date of Investigation:</b> January 26, 2010</p> <p><b>Date of NOE:</b> February 4, 2010</p> <p><b>Background Facts:</b> The EDRP was filed on July 21, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDRP on July 22, 2010. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent's irrigator license expires January 31, 2012.</p> <p><b>LII:</b></p> <ol style="list-style-type: none"> <li>1. Failed to ensure a backflow prevention device was tested prior to being placed into service [30 TEX. ADMIN. CODE § 344.52(c)].</li> <li>2. Failed to obtain a permit required to install an irrigation system prior to installation [30 TEX. ADMIN. CODE § 344.35(d)(2)].</li> <li>3. Failed to install emissions devices in a manner that does not exceed the manufacturer's published recommendation for head spacing at [30 TEX. ADMIN. CODE § 344.62(b)(1)].</li> <li>4. Failed to include in all written estimates, proposals, bids and invoices relating to the installation or repair of an irrigation system the irrigator's name and license number and the required TCEQ statement [30 TEX. ADMIN. CODE § 344.71(b)].</li> <li>5. Failed to refrain from false, misleading, or deceptive practices by an irrigator relating to installation of an irrigation system, and failed to complete a installation, including the final walk through [30 TEX. ADMIN. CODE §§ 344.23 and 35(d)(12)].</li> </ol>	<p><b>Total Assessed:</b> \$1,375</p> <p><b>Total Deferred:</b> \$0</p> <p style="padding-left: 20px;"><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$1,375</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN</i> – N/A  <i>Site/RN</i> – N/A</p> <p><b>Major Source:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b> The Executive Director recognizes that Respondent obtained a permit for the irrigation system at 304 Bareback Trail in Harker Heights, Bell County, Texas, on September 4, 2009.</p> <p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately:             <ol style="list-style-type: none"> <li>a. Begin testing the backflow prevention device of each irrigation system installed;</li> <li>b. Begin ensuring that all spray heads installed meet the manufacturer's published recommendation for head spacing;</li> <li>c. Begin including the irrigator's name and license number, and the required TCEQ statement on all written estimates, proposals, bids and invoices relating to the installation of an irrigation system; and</li> <li>d. Begin refraining from any false, misleading, or deceptive practices relating to installation of an irrigation system and begin completing installations, including a final walk through.</li> </ol> </li> <li>2. Within 15 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	8-Feb-2010	<b>Screening</b>	1-Mar-2010	<b>EPA Due</b>	
	<b>PCW</b>	7-Jun-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Clayton C. Whitson dba C & N Landscaping
<b>Reg. Ent. Ref. No.</b>	RN105074900
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	39222	<b>No. of Violations</b>	5
<b>Docket No.</b>	2010-0311-LII-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Irrigators	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Roshondra Lowe
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,375
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustments are being made for compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$34	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$935	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,375
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$1,375
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,375
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$1,375
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Screening Date 1-Mar-2010

Docket No. 2010-0311-LII-E

PCW

Respondent Clayton C. Whitson dba C & N Landscaping

Policy Revision 2 (September 2002)

Case ID No. 39222

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105074900

Media [Statute] Irrigators

Enf. Coordinator Roshondra Lowe

### 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 adjustments are being made for compliance history.

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

<b>Screening Date</b> 1-Mar-2010	<b>Docket No.</b> 2010-0311-LII-E	<b>PCW</b>	
<b>Respondent</b> Clayton C. Whitson dba C & N Landscaping		<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 39222		<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN105074900			
<b>Media [Statute]</b> Irrigators			
<b>Enf. Coordinator</b> Roshondra Lowe			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 344.52(c)"/>		
<b>Violation Description</b>	<input type="text" value="Failed to ensure the backflow prevention device was tested. Specifically, it was documented that the Respondent failed to test the backflow prevention device prior to it being placed into service."/>		
	<b>Base Penalty</b>	<input type="text" value="\$2,500"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
<b>OR</b>	<b>Release</b>	<b>Harm</b>	
		Major    Moderate    Minor	
	Actual	<input type="text"/>	<input type="text"/>
	Potential	<input checked="" type="text" value="x"/>	<input type="text"/>
			<b>Percent</b> <input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>			
	Falsification	Major	Moderate    Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>
			<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment will or could be exposed to a significant amount of pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>		
	<b>Adjustment</b>	<input type="text" value="\$1,875"/>	
		<input type="text" value="\$625"/>	
<b>Violation Events</b>			
	Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="34"/> Number of violation days
	<i>mark only one with an x</i>	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"/>
			<b>Violation Base Penalty</b> <input type="text" value="\$625"/>
	<input type="text" value="One single event was recommended based on one device not tested."/>		
<b>Good Faith Efforts to Comply</b>			
	<input type="text" value="0.0%"/>	Reduction	<input type="text" value="\$0"/>
		Before NOV    NOV to EDPRP/Settlement	
	Extraordinary	<input type="text"/>	<input type="text"/>
	Ordinary	<input type="text"/>	<input type="text"/>
	N/A	<input checked="" type="text" value="x"/>	(mark with x)
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		
	<b>Violation Subtotal</b>	<input type="text" value="\$625"/>	
<b>Economic Benefit (EB) for this violation</b>			
	<b>Estimated EB Amount</b>	<input type="text" value="\$3"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$625"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$625"/>	

## Economic Benefit Worksheet

**Respondent** Clayton C. Whitson dba C & N Landscaping  
**Case ID No.** 39222  
**Reg. Ent. Reference No.** RN105074900  
**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)	\$85	26-Jan-2010	1-Nov-2010	0.76	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to test the backflow prevention device. The required date is the investigation date. The final date is based on the date corrective actions are expected to be completed.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$85

TOTAL

\$3

<b>Screening Date</b>	1-Mar-2010	<b>Docket No.</b>	2010-0311-LII-E	<b>PCW</b>
<b>Respondent</b>	Clayton C. Whitson dba C & N Landscaping			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	39222			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN105074900			
<b>Media [Statute]</b>	Irrigators			
<b>Enf. Coordinator</b>	Roshondra Lowe			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 344.35(d)(2)			
<b>Violation Description</b>	Failed to obtain the permit required to install an irrigation system. Specifically, a City of Harker Heights inspector documented on September 4, 2009 that installation was in progress but the permit had not been obtained.			
		<b>Base Penalty</b>	\$2,500	

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

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

**>> Programmatic Matrix**

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

\$250

**Violation Events**

Number of Violation Events  Number of violation days

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

**Violation Base Penalty** \$250

One single event is recommended based on one permit not obtained.

**Good Faith Efforts to Comply**  Reduction

	Before NOV		NOV to EDRP/Settlement Offer	
<b>Extraordinary</b>				
<b>Ordinary</b>				
<b>N/A</b>	x		(mark with x)	

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

**Violation Subtotal** \$250

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

**Estimated EB Amount** \$0 **Violation Final Penalty Total** \$250

**This violation Final Assessed Penalty (adjusted for limits)** \$250

## Economic Benefit Worksheet

**Respondent** Clayton C. Whitson dba C & N Landscaping  
**Case ID No.** 39222  
**Reg. Ent. Reference No.** RN105074900  
**Media** Irrigators  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$50	3-Sep-2009	4-Sep-2009	0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain the appropriate permit from the City of Harker Heights. The required date is the date the Respondent was hired to install the irrigation system. The final date is the date the permit was obtained.

### 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

\$50

**TOTAL**

\$0

**Screening Date** 1-Mar-2010 **Docket No.** 2010-0311-LII-E **PCW**  
**Respondent** Clayton C. Whitson dba C & N Landscaping *Policy Revision 2 (September 2002)*  
**Case ID No.** 39222 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105074900  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Roshondra Lowe

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	

**>>Programmatic Matrix**

Matrix Notes					Percent
		Falsification	Major	Moderate	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	<input type="text" value="Human health or the environment will or could be exposed to an insignificant amount of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>				

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

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="(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** Clayton C. Whitson dba C & N Landscaping  
**Case ID No.** 39222  
**Reg. Ent. Reference No.** RN105074900  
**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	26-Jan-2010	1-Nov-2010	0.76	\$4	n/a	\$4

**Notes for DELAYED costs**  
 Estimated additional cost to install spray heads according to the manufacturer's published recommendation for spacing. The required date is the investigation date. The final date is the date corrective actions are expected to be completed.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**  
 (Empty box for notes)

Approx. Cost of Compliance	\$100	<b>TOTAL</b>	\$4
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**Screening Date** 1-Mar-2010 **Docket No.** 2010-0311-LII-E **PCW**  
**Respondent** Clayton C. Whitson dba C & N Landscaping *Policy Revision 2 (September 2002)*  
**Case ID No.** 39222 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105074900  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Roshondra Lowe

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

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

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

  

Matrix Notes	>>Programmatic Matrix				Percent
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text" value="5%"/>
	<input type="text" value="30 to 70% of the rule requirement was not met."/>				
	<b>Adjustment</b> <input type="text" value="\$2,375"/>				

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	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 type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	
<b>Violation Subtotal</b> <input type="text" value="\$125"/>		

**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** Clayton C. Whitson dba C & N Landscaping  
**Case ID No.** 39222  
**Reg. Ent. Reference No.** RN105074900  
**Media** Irrigators  
**Violation No.** 4

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)	\$200	26-Jan-2010	1-Nov-2010	0.76	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost to ensure that all contracts and invoices contain all required information. The required date is the investigation date. The final date is based on the date corrective actions are expected to be completed.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

**TOTAL**

\$8

**Screening Date** 1-Mar-2010 **Docket No.** 2010-0311-LII-E **PCW**  
**Respondent** Clayton C. Whitson dba C & N Landscaping *Policy Revision 2 (September 2002)*  
**Case ID No.** 39222 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105074900  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Roshondra Lowe

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

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

**OR**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

**>>Programmatic Matrix**

Falsification	Harm			Percent
	Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**   
**Adjustment**

**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 Offer
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**   
**Violation Final Penalty Total**   
**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Clayton C. Whitson dba C & N Landscaping  
**Case ID No.** 39222  
**Reg. Ent. Reference No.** RN105074900  
**Media** Irrigators  
**Violation No.** 5

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)	\$500	26-Jan-2010	1-Nov-2010	0.76	\$19	n/a	\$19

**Notes for DELAYED costs**  
 Estimated cost to ensure that installation is timely completed in accordance with bids and proposals, including a final walk through. The required date is the investigation date. The final date is based on the date corrective actions are expected to be completed.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$500

**TOTAL** \$19

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603102872 WHITSON, CLAYTON C Classification: Rating:  
Regulated Entity: RN105074900 C & N Landscaping Classification: Site Rating:  
ID Number(s): LANDSCAPE IRRIGATION LICENSING LICENSE LI0015310  
Location: 12590 Farm-to-Market Road 2410, Belton, TX 76513  
TCEQ Region: REGION 09 - WACO  
Date Compliance History Prepared: March 01, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: March 01, 2005 to March 01, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Roshondra Lowe Phone: (713) 767-3553

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. if Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

## 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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>CLAYTON C. WHITSON DBA C &amp; N</b>	<b>§</b>	
<b>LANDSCAPING;</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>RN105074900</b>	<b>§</b>	

## DEFAULT ORDER

**DOCKET NO. 2010-0311-LII-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Clayton C. Whitson DBA C & N Landscaping ("Respondent").

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

### FINDINGS OF FACT

1. Respondent owns and operates a landscaping business located at 12590 FM 2410, Belton, Bell County, Texas (the "Business"). Respondent holds and maintains landscape irrigator license no. LI0015310, issued by the TCEQ on January 28, 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.
2. During an investigation conducted on January 26, 2010, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to ensure the backflow prevention device was tested prior to being placed into service at 304 Bareback Trail in Harker Heights, Bell County, Texas;
  - b. Failed to obtain the permit required to install an irrigation system prior to installation at 304 Bareback Trail in Harker Heights, Bell County, Texas;
  - c. Failed to install emissions devices in a manner that does not exceed the manufacturer's published recommendation for head spacing at 304 Bareback Trail in Harker Heights, Bell County, Texas;
  - d. Failed to include in all written estimates, proposals, bids and invoices relating to the installation or repair of an irrigation system the irrigator's name and license number, and the required TCEQ statement: "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](http://www.tceq.state.tx.us)"; and

- e. Failed to refrain from false, misleading, or deceptive practices by an irrigator relating to installation of an irrigation system, and failing to complete the installation, including the final walk through at 304 Bareback Trail in Harker Heights, Bell County, Texas. Specifically, the documents provided by Respondent indicated a completion date of September 3, 2009, however, installation was not complete and the partial installation was not in accordance with the proposed plans.
3. Respondent received notice of the violations on or about February 9, 2010.
  4. The Executive Director recognizes that Respondent obtained a permit for the irrigation system at 304 Bareback Trail in Harker Heights, Bell County, Texas, on September 4, 2009.
  5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Clayton C. Whitson DBA C & N Landscaping" (the "EDPRP") in the TCEQ Chief Clerk's office on July 21, 2010.
  6. By letter dated July 21, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on July 22, 2010, as evidenced by the signature on the card.
  7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to ensure a backflow prevention device was tested prior to being placed into service, in violation of 30 TEX. ADMIN. CODE § 344.52(c).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to obtain a permit required to install an irrigation system prior to installation, in violation of 30 TEX. ADMIN. CODE § 344.35(d)(2).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to install emissions devices in a manner that does not exceed the manufacturer's published recommendation for head spacing, in violation of 30 TEX. ADMIN. CODE § 344.62(b)(1).

5. As evidenced by Finding of Fact No. 2.d., Respondent failed to include in all written estimates, proposals, bids and invoices relating to the installation or repair of an irrigation system the irrigator's name and license number, and the required TCEQ statement, in violation of 30 TEX. ADMIN. CODE § 344.71(b).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to refrain from false, misleading, or deceptive practices by an irrigator relating to installation of an irrigation system, and failed to complete an installation, including the final walk through, in violation of 30 TEX. ADMIN. CODE §§ 344.23 and 35(d)(12).
7. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of one thousand three hundred seventy-five dollars (\$1,375.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. 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 one thousand three hundred seventy-five dollars (\$1,375.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Clayton C. Whitson DBA C & N Landscaping; Docket No. 2010-0311-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

3. Respondent shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Respondent shall:
    - i. Begin testing the backflow prevention device of each irrigation system installed, in accordance with 30 TEX. ADMIN. CODE § 344.52(c);
    - ii. Begin ensuring that all spray heads installed meet the manufacturer's published recommendation for head spacing, in accordance with 30 TEX. ADMIN. CODE § 344.62(b);
    - iii. Begin including the irrigator's name and license number, and the required TCEQ statement on all written estimates, proposals, bids and invoices relating to the installation of an irrigation system, in accordance with 30 TEX. ADMIN. CODE § 344.71; and
    - iv. Begin refraining from any false, misleading, or deceptive practices relating to installation of an irrigation system and begin completing installations, including the final walk through, in accordance with 30 TEX. ADMIN. CODE §§ 344.23 and 344.35(d)(12).
  - b. Within 15 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Landscape Irrigator Licensing Program  
Occupational Licensing Section, MC 178  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
6. 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.
7. 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.
8. 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

