

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2009-1566-LII-E**

**RN104574389**

**CASE NO. 38474**

**RESPONDENT NAME: JOEY SISCA**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input checked="" 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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Lago Vista, Travis County</p> <p><b>TYPE OF OPERATION:</b> landscaping business</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this facility location. Respondent owes \$3,143.52 in past-due administrative penalties (2005-1114-LII-E).</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired January 24, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675  Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Jorge Ibarra, P.E., Air Enforcement Section, MC R-4, (817) 588-5890  <b>TCEQ Regional Contact:</b> Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5828  <b>Respondent:</b> Joey Sisca, A-1 Landscape and Irrigation, P.O. Box 4752, Lago Vista, Texas 78645  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaint(s):</b>                      N/A</p> <p><b>Date of Investigation:</b>                      July 10, 2009</p> <p><b>Date of NOE:</b>                      September 16, 2009</p> <p><b>Background Facts:</b>                      The EDPRP was filed on May 20, 2010. Respondent filed an answer and the matter was referred to SOAH. Respondent failed to appear at the preliminary hearing and the matter was remanded to the Executive Director to dispose of this case on a default basis.</p> <p><b>Current Compliance Status:</b>                      Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p><b>LII:</b></p> <p>1. Failed to possess an irrigator license before advertising or representing to the public that an individual can perform services for which a license is required unless the individual holds a license or employs an individual who holds a current license [30 TEX. ADMIN. CODE § 30.5(b) and TCEQ Agreed Order Docket No. 2005-1114-LII-E, Ordering Provision No. 2.b.].</p> <p>2. Failed to pay the outstanding administrative penalty for Account No. 23602445 [TEX. WATER CODE § 7.061 and TCEQ Agreed Order Docket No. 2005-1114-LII-E, Ordering Provision No. 1].</p>	<p><b>Total Assessed:</b> \$900</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$900</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>                      Person/CN – N/A                      Site/RN – 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 removed his advertisement as a landscape and irrigation installer from the local newspaper on or about January 1, 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 pay the outstanding administrative penalties for Account No. 23602445.</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>	28-Sep-2009	<b>Screening</b>	1-Oct-2009	<b>EPA Due</b>	
	<b>PCW</b>	18-Mar-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Joey Sisca
<b>Reg. Ent. Ref. No.</b>	RN104574389
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38474	<b>No. of Violations</b>	2
<b>Docket No.</b>	2009-1566-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>	Jorge Ibarra, P.E.
		<b>EC's Team</b>	Enforcement Team 3
<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>	\$750
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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>	20.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$150
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Notes

The Respondent was issued one 1660 Agreed Order containing denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes

The Respondent does not meet the culpability criteria.

<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	\$117
Approx. Cost of Compliance	\$111

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$900
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

<b>Final Penalty Amount</b>	\$900
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$900
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<b>DEFERRAL</b>		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.)

Notes

No deferral offered for non expedited settlement.

<b>PAYABLE PENALTY</b>	\$900
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**Screening Date** 1-Oct-2009

**Docket No.** 2009-1566-LII-E

**PCW**

**Respondent** Joey Sisca

*Policy Revision 2 (September 2002)*

**Case ID No.** 38474

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN104574389

**Media [Statute]** Irrigators

**Enf. Coordinator** Jorge Ibarra, P.E.

### 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 ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 20%

#### >> Repeat Violator (Subtotal 3)

N/A

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

N/A

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

**Compliance History Notes**

The Respondent was issued one 1660 Agreed Order containing denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 20%

**Screening Date** 1-Oct-2009 **Docket No.** 2009-1566-LII-E **PCW**  
**Respondent** Joey Sisca *Policy Revision 2 (September 2002)*  
**Case ID No.** 38474 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104574389  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Jorge Ibarra, P.E.

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 30.5(b) and TCEQ Agreed Order Docket No. 2005-1114-LII-E, Ordering Provision No. 2.b.

**Violation Description** Failed to possess an irrigator license before advertising or representing to the public that an individual can perform services for which a license is required unless the individual holds a license or employs an individual who holds a current license. Specifically, the Respondent advertised in the local newspaper as a landscape and irrigation installer without having a license.

**Base Penalty** \$2,500

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

**Adjustment** \$2,250

\$250

**Violation Events**

Number of Violation Events 3 70 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$750

Three monthly events are recommended. The penalty was calculated from the effective date of the Agreed Order, October 23, 2008, to the compliance date of January 1, 2009.

**Good Faith Efforts to Comply**

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

**Violation Subtotal** \$750

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$117

**Violation Final Penalty Total** \$900

**This violation Final Assessed Penalty (adjusted for limits)** \$900

## Economic Benefit Worksheet

**Respondent** Joey Sisca  
**Case ID No.** 38474  
**Reg. Ent. Reference No.** RN104574389  
**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	\$111	23-Oct-2008	1-Jan-2009			n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to stop advertising and to obtain an irrigator license. Date Required is the effective date of the Agreed Order. Final Date is the compliance date.

### 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)				1.11	\$6	\$111	\$117

Notes for AVOIDED costs

Approx. Cost of Compliance

\$111

**TOTAL**

\$117

**Screening Date** 1-Oct-2009 **Docket No.** 2009-1566-LII-E **PCW**  
**Respondent** Joey Sisca *Policy Revision 2 (September 2002)*  
**Case ID No.** 38474 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104574389  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Jorge Ibarra, P.E.

**Violation Number** 2  
**Rule Cite(s)** Texas Water Code § 7.061 and TCEQ Agreed Order Docket No. 2005-1114-LII-E, Ordering Provision No. 1

**Violation Description** Failed to pay outstanding administrative penalty for Account No. 23602445.

**Base Penalty** \$2,500

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

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

**>> Programmatic Matrix**

<b>Falsification</b>				Percent
Major	Moderate	Minor		
				0%

**Matrix Notes** N/A

**Adjustment** \$2,500

\$0

**Violation Events**

Number of Violation Events 1 1 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$0

No penalty is recommended because penalty and interest will be assessed at the next billing.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

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

**Violation Subtotal** \$0

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

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

**This violation Final Assessed Penalty (adjusted for limits)** \$0

## Economic Benefit Worksheet

**Respondent** Joey Sisca  
**Case ID No.** 38474  
**Reg. Ent. Reference No.** RN104574389  
**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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

N/A

### 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

\$0

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602816084 SISCA, JOEY Classification: Rating:  
Regulated Entity: RN104574389 SISCA JOEY Classification: Site Rating:  
Location: PO BOX 4752, LAGO VISTA, TX, 78645  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: September 22, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 22, 2004 to September 22, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

## 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.

**Effective Date: 10/23/2008**

**ADMINORDER 2005-1114-LII-E**

Classification: Major

Citation: 12 TOC Chapter 1903, SubChapter F 1903.251  
2F TWC Chapter 37, SubChapter L 37.003

30 TAC Chapter 30, SubChapter A 30.5(a)

30 TAC Chapter 344, SubChapter A 344.4(a)

Description: Failure to hold an irrigators license prior to selling, designing, consulting, installing, maintaining, altering repairing or servicing an irrigation system, including the connection of such system to any water supply.

Classification: Moderate

Citation: 30 TAC Chapter 30, SubChapter A 30.5(b)

Description: Failure to possess an irrigator license before advertising or representing to the public that he could perform services for which a license was required without holding such a license or employing an individual who held a current license.

Classification: Major

Citation: 30 TAC Chapter 30, SubChapter A 30.5(b)

30 TAC Chapter 344, SubChapter C 344.58(b)

Description: Failure as an individual to refrain from using or attempting to use the license of someone else who is a licensed irrigator licensed installer and to possess an irrigator license before advertising or representing to the public that an individual can perform services for which a license is required unless the individual holds a license or employs an individual who holds a current license.

- 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  
JOEY SISCA;  
RN104574389**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER**

**DOCKET NO. 2009-1566-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 Joey Sisca ("Respondent").

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

**FINDINGS OF FACT**

1. Respondent sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems in Travis County, Texas. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903 and TEX. WATER CODE ch. 37.
2. During an investigation conducted on July 10, 2009, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to possess an irrigator license before advertising or representing to the public that an individual can perform services for which a license is required unless the individual holds a license or employs an individual who holds a current license. Specifically, Respondent advertised in the local newspaper as a landscape and irrigation installer without having a license; and
  - b. Failed to pay the outstanding administrative penalty for Account No. 23602445.
3. Respondent received notice of the violations on or about September 21, 2009.
4. The Executive Director recognizes that Respondent removed his advertisement as a landscape and irrigation installer from the local newspaper on or about January 1, 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 Joey Sisca" (the "EDPRP") in the TCEQ Chief Clerk's office on May 20, 2010.

6. By letter dated May 20, 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 June 4, 2010, as evidenced by the signature on the card.
7. Respondent's answer requesting a hearing was filed on July 13, 2010, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on August 23, 2010.
8. On September 3, 2010, the TCEQ Chief Clerk mailed the Notice of the September 30, 2010, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent. According to the return receipt "green card," Respondent received notice of the September 30, 2010, preliminary hearing on September 7, 2010, as evidenced by the signature on the card.
9. On September 30, 2010 the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the preliminary hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
10. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, on September 30, 2010, so that TCEQ may dispose of this case on a default basis.

#### **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 possess an irrigator license before advertising or representing to the public that an individual can perform services for which a license is required unless the individual holds a license or employs an individual who holds a current license, in violation of 30 TEX. ADMIN. CODE § 30.5(b) TCEQ Agreed Order Docket No. 2005-1114-LII-E, Ordering Provision No. 2.b.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to pay the outstanding administrative penalty for Account No. 23602445, in violation of TEX. WATER CODE § 7.061 and TCEQ Agreed Order No. 2005-1114-LII-E, Ordering Provision No. 1.
4. 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).

5. As evidenced by Finding of Fact No. 7, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105 and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
6. As evidenced by Finding of Fact No. 8, Respondent was provided proper notice of the preliminary hearing pursuant to TEX. GOV'T. CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE § 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
7. As evidenced by Finding of Fact No. 9, Respondent failed to appear for the preliminary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), and 30 TEX. ADMIN. CODE § 70.106(b), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty and corrective action recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of 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.
9. An administrative penalty in the amount of nine hundred dollars (\$900.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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 nine hundred dollars (\$900.00) 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: Joey Sisca; Docket No. 2009-1566-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 pay the outstanding administrative penalties for Account No. 23602445; and
  - 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 Ordering Provision No. 3.a. 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:

Tracy Miller, Landscape Irrigation Program  
Texas Commission on Environmental Quality, MC 174  
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 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

**AFFIDAVIT OF PHILLIP M. GOODWIN**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Phillip M. Goodwin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Joey Sisca” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 20, 2010.

The EDPRP was mailed to Joey Sisca (“Respondent”) at his last known address on May 20, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Respondent received notice of the EDPRP on June 4, 2010, as evidenced by the signature on the card.

Respondent’s answer requesting a hearing was filed on July 13, 2010, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on August 23, 2010.

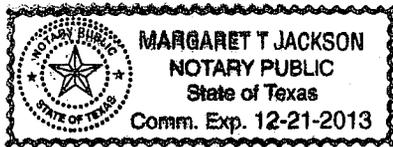
Notice of the September 30, 2010 preliminary hearing was mailed to Respondent by the TCEQ Chief Clerk on September 3, 2010. The Notice was sent to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Respondent received the Notice of the Preliminary Hearing on September 7, 2010.

Respondent failed to appear at the preliminary hearing on September 30, 2010. At that hearing, I requested and received a finding that Respondent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested and received a remand from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency “to allow the agency to dispose of the case on a default basis under TEX. GOV’T CODE § 2001.056 and the referring agency’s rules.” Pursuant to TEX. GOV’T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Respondent and assess the penalty and corrective action recommended by the Executive Director.

  
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Phillip M. Goodwin, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, 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 7<sup>th</sup> day of December, A.D., 2010.



*Margaret Jackson*  
Notary Signature