

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
*Protecting Texas by Reducing and Preventing Pollution*

January 21, 2011

Matt R. Phillips  
P.O. Box 130131  
Tyler, TX 75713

Re: TCEQ Enforcement Action  
Matt R. Phillips  
Docket No.: 2010-0114-LII-E

Dear Mr. Phillips:

Enclosed, for your records, are copies of documents which were filed in the Chief Clerk's Office of the Texas Commission on Environmental Quality (TCEQ) so that the above-referenced matter may be included on the agenda of items to be considered for approval by the commission at a public meeting scheduled for **February 9, 2011, at 9:30 a.m.** The meeting will be held at the TCEQ Park 35 Campus, located at 12118 North I-35, in Building E, Room 201S, in Austin, Texas. If you have any questions you may contact me at the TCEQ Litigation Division at (512) 239-0620.

Sincerely,

/s/

Marshall Coover  
Attorney  
Litigation Division  
Marshall.Coover@tceq.texas.gov

Enclosure

cc: Mike Pace, Water Enforcement Section  
Noel Luper, Tyler Regional Office  
Tracy Miller, Landscape Irrigation Program  
Lena Roberts, Agenda Coordinator, Litigation Division

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

DOCKET NO. 2010-0114-LII-E

RN103591921

CASE NO. 39039

**RESPONDENT NAME: MATT R. PHILLIPS**

<b>ORDER TYPE:</b>		
<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	
<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> 12854 Vickery Drive, Tyler, Smith County</p> <p><b>TYPE OF OPERATION:</b> landscape irrigation</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> One complaint was received, alleging that Respondent was advertising irrigation work on his truck and was not a licensed irrigator. There is no record of additional pending enforcement actions regarding this respondent.</p> <p><b>INTERESTED PARTIES:</b> 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.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired November 8, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Marshall Coover, Litigation Division, MC 175, (512) 239-3400                  Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Mike Pace, Water Enforcement Section, MC R-4, (817) 588-5933  <b>TCEQ Regional Contact:</b> Noel Luper, Tyler Regional Office, MC R-5, (903) 535-5174  <b>Respondent:</b> Matt R. Phillips, P.O. Box 130131, Tyler, Texas 75713  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**RESPONDENT NAME: MATT R. PHILLIPS  
DOCKET NO. 2010-0114-LII-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<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(s) of Complaint(s):</b> May 18, 2009</p> <p><b>Date(s) of Investigation:</b> November 9, 2009</p> <p><b>Date(s) of NOE(s):</b> December 1, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on May 12, 2010. The EDFARP was filed on July 22, 2010. The EDPRP and EDFARP were mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP and the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned. 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 certifying compliance. Respondent's irrigator license expired on February 29, 2007.</p> <p><b>PST:</b> Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration [30 TEX. ADMIN. CODE § 30.5(b) and TEX. WATER CODE § 37.003]</p>	<p><b>Total Assessed:</b> \$250</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> \$250</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><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>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately cease advertising irrigation system services until properly licensed.</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>	18-Jan-2010			
	<b>PCW</b>	15-Jul-2010	<b>Screening</b>	22-Jan-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Matt R. Phillips
<b>Reg. Ent. Ref. No.</b>	RN103591921
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	39039	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2010-0114-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>	Mike Pace	
		<b>EC's Team</b>	Enforcement Team 6	
<b>Admin. Penalty \$ Limit</b>	<b>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>	\$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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustment due to 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	\$5	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$111	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$250
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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>	\$250
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$250
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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>	\$250
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**Screening Date** 22-Jan-2010

**Docket No.** 2010-0114-LII-E

**PCW**

**Respondent** Matt R. Phillips

Policy Revision 2 (September 2002)

**Case ID No.** 39039

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN103591921

**Media [Statute]** Irrigators

**Enf. Coordinator** Mike Pace

### 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> )	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)** 0%

**>> Repeat Violator (Subtotal 3)**

No

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

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

N/A

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

**>> Compliance History Summary**

**Compliance History Notes** No adjustment due to compliance history.

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

Screening Date 22-Jan-2010

Docket No. 2010-0114-LII-E

PCW

Respondent Matt R. Phillips

Policy Revision 2 (September 2002)

Case ID No. 39039

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103591921

Media [Statute] Irrigators

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 30.5(b) and Tex. Water Code § 37.003

Violation Description Failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration, as documented during a record review conducted on November 9, 2009. Specifically, the Respondent advertised irrigation system work without possessing a valid license.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor
			x	

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 Number of violation days 74

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

One single event is recommended based on documentation of the violation during a record review conducted on November 9, 2009.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$250

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

## Economic Benefit Worksheet

**Respondent** Matt R. Phillips  
**Case ID No.** 39039  
**Reg. Ent. Reference No.** RN103591921  
**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	9-Nov-2009	22-Sep-2010	0.87	\$5	n/a	\$5
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain an irrigator license. Date required is the record review date and the final date is the expected 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)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$111

**TOTAL**

\$5

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602111882 PHILLIPS, MATT R Classification: Rating:  
Regulated Entity: RN103591921 PHILLIPS, MATT R Classification: Site Rating:

ID Number(s):

Location:

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: July 05, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 21, 2005 to January 21, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Mike Pace Phone: 239 - 5933

## 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.)  
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  
MATT R. PHILLIPS;  
RN103591921**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-0114-LII-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Matt R. Phillips ("Mr. Phillips").

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

### **FINDINGS OF FACT**

1. Mr. Phillips owns and operates a landscaping business located at 12854 Vickery Drive, Tyler, Smith County, Texas ("the Business"). Mr. Phillips held landscape irrigator license number 9331, which expired on February 28, 2007. Mr. Phillips sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Phillips is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903 and TEX. WATER CODE ch. 37.
2. During an investigation conducted on November 9, 2009, a TCEQ Central Office investigator documented that Mr. Phillips failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration. Specifically, Mr. Phillips advertised irrigation system services without possessing a valid license.
3. Mr. Phillips received notice of the violation on or about December 6, 2009.
4. 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 Matt R. Phillips" (the "EDPRP") in the TCEQ Chief Clerk's office on May 12, 2010.
5. By letter dated May 12, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Phillips with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by

certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Phillips received notice of the EDPRP.

6. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Matt R. Phillips" (the "EDFARP") in the TCEQ Chief Clerk's office on July 22, 2010.
7. By letter dated July 22, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Phillips with notice of the EDFARP. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Phillips received notice of the EDFARP.
8. More than 20 days have elapsed since Mr. Phillips received notice of the EDPRP and the EDFARP, provided by the Executive Director. Mr. Phillips failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Mr. Phillips 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, Mr. Phillips failed to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration, in violation of 30 TEX. ADMIN. CODE § 30.5(b) and TEX. WATER CODE § 37.003.
3. As evidenced by Findings of Fact Nos. 4 through 7, the Executive Director timely served Mr. Phillips with proper notice of the EDPRP and the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 8, Mr. Phillips failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Phillips and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Phillips for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two hundred fifty dollars (\$250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

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

### **ORDERING PROVISIONS**

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

1. Mr. Phillips is assessed an administrative penalty in the amount of two hundred fifty dollars (\$250.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Mr. Phillips'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. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Matt R. Phillips; Docket No. 2010-0114-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. Mr. Phillips shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Mr. Phillips shall cease advertising irrigation system services until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE chs. 30 and 344; and,
  - b. Within 15 days after the effective date of this Order, Mr. Phillips shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.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."

Mr. Phillips shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.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, MC 174  
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 Mr. Phillips. Mr. Phillips 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 Mr. Phillips fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Phillips's failure to comply is not a violation of this Order. Mr. Phillips shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Phillips shall notify the Executive Director within seven days after Mr. Phillips 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 Mr. Phillips shall be made in writing to the Executive Director. Extensions are not effective until Mr. Phillips 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 Mr. Phillips if the Executive Director determines that Mr. Phillips 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.

Matt R. Phillips  
Docket No. 2010-0114-LII-E  
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**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 MARSHALL COOVER**

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

“My name is Marshall Coover. 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 Matt R. Phillips” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 12, 2010.

The EDPRP was mailed to Mr. Phillips at his last known address on May 12, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Phillips received notice of the EDPRP.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Matt R. Phillips” (the “EDFARP”) was filed with the Office of the Chief Clerk on July 22, 2010.

The EDFARP was mailed to Mr. Phillips at his last known address on July 22, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Phillips received notice of the EDFARP.

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

  
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Marshall Coover, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Marshall Coover, 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 22<sup>nd</sup> day of September A.D., 2010.

  
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Notary Signature

