

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-1504-WR-E

RN100798362

CASE NO. 40385

RESPONDENT NAME: TRINITY TURF NURSERY, INC.

| | | |
|--|---|---|
| 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 type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input checked="" type="checkbox"/> WATER RIGHTS | <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <input type="checkbox"/> USED OIL | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> WATER UTILITY |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Foutch Road and Farm-to-Market Road 377, about two miles southeast of Pilot Point, Denton County</p> <p>TYPE OF OPERATION: turf grass nursery</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired May 2, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: James Sallans, Litigation Division, MC 175, (512) 239-3400 Lena Roberts, Litigation Division, MC 175, (512) 239-3400 TCEQ Enforcement Coordinator: Cheryl Thompson, Water Enforcement Section, MC R4, (817) 588-5886 TCEQ Regional Contact: Sid Slocum, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5901 Respondent: Wally Huggett, President, Trinity Turf Nursery, Inc., 4114 East Marlette Road, Marlette, Michigan 48453 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p> | | |

| VIOLATION SUMMARY CHART: | | |
|---|---|---|
| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
| <p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaint(s): N/A</p> <p>Date(s) of Investigation: August 10, 2010</p> <p>Date(s) of NOE(s): August 27, 2010</p> <p>Background Facts: The EDRP was filed on February 18, 2011, and mailed to Respondent via first class mail and certified mail, return receipt requested. According to the return receipt "green card," Respondent received the EDRP on February 22, 2011. Respondent failed to file an answer or request a hearing.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p>WR: Failed to obtain authorization prior to storing, impounding, diverting or using state water [TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11].</p> | <p>Total Assessed: \$1,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$1,000</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>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Average by Default</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions: Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 45 days, cease storing, impounding, diverting, taking and/or use of state water at the Site until authorization has been obtained. 2. Within 60 days, submit written certification demonstrating compliance. |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 30-Aug-2010 | Screening | 13-Sep-2010 | EPA Due | |
| | PCW | 14-Dec-2010 | | | | |

| | | | |
|--|----------------------------|---------------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | Trinity Turf Nursery, Inc. | | |
| Reg. Ent. Ref. No. | RN100798362 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

| | | | |
|--|----------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 40385 | No. of Violations | 1 |
| Docket No. | 2010-1504-WR-E | Order Type | 1660 |
| Media Program(s) | Water Rights | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Cheryl Thompson |
| | | EC's Team | Enforcement Team 3 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$5,000 |

Penalty Calculation Section

| | | |
|---|-------------------|---------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$1,000 |
|---|-------------------|---------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|------------------|--------------------------------|-----|
| Compliance History | 0.0% Enhancement | Subtotals 2, 3, & 7 | \$0 |
|---------------------------|------------------|--------------------------------|-----|

| | |
|--------------|---------------------------------------|
| Notes | No adjustment for Compliance History. |
|--------------|---------------------------------------|

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------------------|-------------------|-----|

| | |
|--------------|--|
| Notes | The Respondent does not meet the culpability criteria. |
|--------------|--|

| | | |
|--|-------------------|-----|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|-----|

| | | | |
|-------------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|-----|

| | | |
|----------------------------|-------|-----------------------------------|
| Total EB Amounts | \$22 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$500 | |

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$1,000 |
|-----------------------------|-----------------------|---------|

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

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$1,000 |
|-----------------------------|---------|

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$1,000 |
|-----------------------------------|-------------------------------|---------|

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

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

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

| | |
|------------------------|---------|
| PAYABLE PENALTY | \$1,000 |
|------------------------|---------|

Screening Date 13-Sep-2010

Docket No. 2010-1504-WR-E

PCW

Respondent Trinity Turf Nursery, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40385

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100798362

Media [Statute] Water Rights

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for Compliance History.

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

Screening Date 13-Sep-2010
Respondent Trinity Turf Nursery, Inc.
Case ID No. 40385
Reg. Ent. Reference No. RN100798362
Media [Statute] Water Rights
Enf. Coordinator Cheryl Thompson

Docket No. 2010-1504-WR-E

PCW

Policy Revision 2 (September 2002)
PCW Revision October 30, 2008

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"/> | <input type="text" value="0%"/> |
| Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | |

>> **Programmatic Matrix**

| Matrix Notes | Falsification | Harm | | | Percent |
|--------------|----------------------|---|----------------------|----------------------|----------------------------------|
| | | Major | Moderate | Minor | |
| | <input type="text"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="10%"/> |

Matrix Notes

Adjustment

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 checked="" type="text" value="x"/> |
| | quarterly | <input type="text"/> |
| | semiannual | <input type="text"/> |
| | annual | <input type="text"/> |
| | single event | <input type="text"/> |

Violation Base Penalty

Good Faith Efforts to Comply

0.0% Reduction
 Before NOV NOV to EDPRP/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

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Trinity Turf Nursery, Inc.
Case ID No. 40385
Req. Ent. Reference No. RN100798362
Media Water Rights
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) | \$500 | 10-Aug-2010 | 30-Jun-2011 | 0.89 | \$22 | n/a | \$22 |

Notes for DELAYED costs

Estimated cost to obtain authorization to divert water in the state for irrigation use. Date required is the date of the investigation and final date is the projected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$22

Compliance History Report

Customer/Respondent/Owner-Operator: CN600483903 Trinity Turf Nursery, Inc. Classification: AVERAGE Rating: 3.01

Regulated Entity: RN100798362 TRINITY TURF NURSERY Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER DF0630K

Location: FOUTCH ROAD AND FM 377 ABOUT 2 MILES SOUTHEAST OF PILOT POINT, DENTON COUNTY, TEXAS

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: September 15, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 15, 2005 to September 15, 2010

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

Name: Cheryl Thompson Phone: (817) 588-5886

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
6. Rating Date: 9/1/2010 Repeat Violator: NO

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.)
1 08/27/2010 (849907)
 - 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TRINITY TURF NURSERY, INC.;
RN100798362**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1504-WR-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 11 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 Trinity Turf Nursery, Inc. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a turf grass nursery located at Foutch Road and Farm-to-Market Road 377, about two miles southeast of Pilot Point in Denton County, Texas (the "Site"). The Site adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(50).
2. During an investigation conducted on August 10, 2010, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent failed to obtain authorization prior to storing, impounding, diverting or using state water. Specifically, Respondent was storing, impounding, diverting and/or using state water at a commercial operation without authorization.
3. Respondent received notice of the violation on or about September 1, 2010.
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 Trinity Turf Nursery, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on February 18, 2011.
5. By letter dated February 18, 2011, sent to Respondent's last known address 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 February 22, 2011, as evidenced by the signature on the card.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer and failed to request a hearing.

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. 11 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to obtain authorization prior to storing, impounding, diverting, or using state water, in violation of TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11.
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 11.0842 and TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 11.0842, 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.
6. An administrative penalty in the amount of one thousand dollars (\$1,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 11.0842.
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. Respondent is assessed an administrative penalty in the amount of one thousand dollars (\$1,000.00) 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: Trinity Turf Nursery, Inc.; Docket No. 2010-1504-WR-E" to:

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

3. Respondent shall undertake the following technical requirements:
 - a. Within 45 days after the effective date of this Order, Respondent shall cease any and all storing, impounding, diverting, taking and use of state water at the Site until authorization has been obtained pursuant to 30 TEX. ADMIN. CODE ch. 297; and
 - b. Within 60 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and shall 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
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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 Site 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

For the Commission

Affidavit of Jim Sallans

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

"My name is Jim Sallans. 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 Trinity Turf Nursery, Inc." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 18, 2011.

The EDPRP was mailed to Respondent's last known address on February 18, 2011 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 February 22, 2011, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.



Jim Sallans, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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 17th day of March, A.D. 2011.



Notary Signature