

Mark P. Choate

RN103747309

Docket No. 2010-0526-LII-E

**Order Type:**

Agreed Order

**Media:**

LII

**Small Business:**

Yes

**Locations Where Violations Occurred:**

4728 Dozier Road, Carrollton, Dallas County (business address); 71 locations in Bexar County

**Type of Operation:**

Landscape irrigation business

**Other Significant Matters:**

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: None

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

**Texas Register Publication Date:** May 13, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$18,105

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$605

**Total Due to General Revenue:** \$17,500

Payment Plan: 35 payments of \$500 each

**SEP Conditional Offset:** N/A

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN – N/A

Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

Mark P. Choate

RN103747309

Docket No. 2010-0526-LII-E

***Investigation Information***

**Complaint Date(s):** October 26, 2009  
Complaint Information: Alleged that Respondent failed to obtain the required permits for approximately 71 irrigation systems.  
**Date(s) of Investigation:** November 5, 2009  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** February 26, 2010

***Violation Information***

Failed to obtain all permits and inspections required to install an irrigation system [30 TEX. ADMIN. CODE § 344.35(d)(2) and (3)].

***Corrective Actions/Technical Requirements***

**Corrective Action Completed:**

N/A

**Technical Requirements:**

1. Within 30 days:
  - i. Implement measures and procedures designed to ensure that all required permits and inspections are obtained for irrigation systems installed by Respondent in the future;
  - ii. Submit to TCEQ a list of the Sites for which all required permits and inspections have been obtained. The list shall include the permit date, inspection date, and address of each Site, and shall be accompanied by detailed supporting documentation; and
  - iii. For the Sites for which no permits or inspections have been obtained, mail to the property owner of each Site, via certified mail, return receipt requested, a letter requesting permission to enter the Site for the sole purpose of having the irrigation system inspected, and notifying the property owner that failure to respond within 30 days of the date of the letter will constitute a refusal to grant access.
2. Within 60 days:
  - i. Obtain all required permits and complete all required inspections at the Sites to which Respondent has been granted access by the property owner;
  - ii. Or, if Respondent is refused access to a Site by the property owner or the property owner fails to timely respond in writing to the request for address, submit to TCEQ the addresses for each Site at which Respondent has been refused access, the following documentation:
    - A. A copy of the letter sent to the property owner;
    - B. A copy of the signed certified mail "green card" for each letter, or a copy of the envelope if the letter is returned to Respondent without a "green card" signature; and
    - C. Written certification, certifying that the property owner failed to respond or refused to grant Respondent access to the Site.
3. Within 75 days, submit written certification demonstrating compliance.

Mark P. Choate

RN103747309

Docket No. 2010-0526-LII-E

***Litigation Information***

**Date Petition(s) Filed:** August 18, 2010  
**Date Answer Filed:** September 2, 2010  
**SOAH Referral Date:** October 15, 2010  
**Hearing Date:**  
Preliminary hearing: December 16, 2010 (waived)  
Evidentiary hearing: April 21, 2011  
**Settlement Date:** April 18, 2011

***Contact Information***

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320  
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** James Nolan, MC 149, (512) 239-6634

**Respondent:** Mark P. Choate, 4728 Dozier Road, Carrollton, TX 75010

**Respondent's Attorney:** George A. (Tony) Mallers, Attorney, Cowles & Thompson, 901 Main Street, Suite 3900, Dallas, TX 75202

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	1-Mar-2010	<b>Screening</b>	29-Mar-2010	<b>EPA Due</b>	
	<b>PCW</b>	7-Jul-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Mark P. Choate
<b>Reg. Ent. Ref. No.</b>	RN103747309
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	39445	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2010-0526-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>	James Nolan	
		<b>EC's Team</b>	Enforcement Team 4	
<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>	\$17,750
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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>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$355
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<b>Notes</b>	Penalty adjustment due to one non-similar NOV.
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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	\$865	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,017	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$18,105
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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>	\$18,105
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$18,105
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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>	\$18,105
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**Screening Date** 29-Mar-2010

**Docket No.** 2010-0526-LII-E

**PCW**

**Respondent** Mark P. Choate

Policy Revision 2 (September 2002)

**Case ID No.** 39445

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN103747309

**Media [Statute]** Irrigators

**Enf. Coordinator** James Nolan

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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	1	2%
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)** 2%

>> **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**

Penalty adjustment due to one non-similar NOV.

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

<b>Screening Date</b>	29-Mar-2010	<b>Docket No.</b>	2010-0526-LII-E	<b>PCW</b>
<b>Respondent</b>	Mark P. Choate	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	39445	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN103747309			
<b>Media [Statute]</b>	Irrigators			
<b>Enf. Coordinator</b>	James Nolan			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 344.35(d)(2) and 344.35(d)(3)			
<b>Violation Description</b>	Failed to obtain all permits and inspections required to install an irrigation system. Specifically, the Respondent failed to obtain the required permits before installing irrigation systems at the Sites contained in the attached table between October 2, 2008 and February 20, 2009.			
<b>Base Penalty</b>	\$2,500			

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

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

**>> Programmatic Matrix**

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

\$250

**Violation Events**

Number of Violation Events	71	41	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
			<b>Violation Base Penalty</b> \$17,750
Seventy-one single events are recommended based upon the 71 installations.			

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

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	mark with x
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.	
		<b>Violation Subtotal</b> \$17,750

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

<b>Estimated EB Amount</b>	\$865	<b>Violation Final Penalty Total</b>	\$18,105
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$18,105

## Economic Benefit Worksheet

**Respondent** Mark P. Choate  
**Case ID No.** 39445  
**Reg. Ent. Reference No.** RN103747309  
**Media** Irrigators  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$9,017	2-Oct-2008	2-Sep-2010	1.92	\$865	n/a	\$865
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to obtain the required permits based upon the 71 locations based upon the City of San Antonio fee of \$127 per permit. The date required is the date of the first installation and the final date is the estimated 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	\$9,017	<b>TOTAL</b>	\$865
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# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602262792 CHOATE, MARK P.	Classification:	Rating:
Regulated Entity:	RN103747309 CHOATE, MARK P.	Classification:	Site Rating:
ID Number(s):	LANDSCAPE IRRIGATION LICENSING LICENSE		LI0003675
Location:	4728 Dozier Road, Carrollton, Texas 75011		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	March 29, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 29, 2005 to March 29, 2010		

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

Name: James Nolan Phone: (512) 239-6634

## Site Compliance History Components

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

### Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - Date: 03/28/2006 (455782)
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 344, SubChapter D 344.70
  - Description: Failure by a licensed irrigator to comply with local regulations that require reasonable inspection requirements, ordinances or regulations designed to protect the public water supply, any of which relates to work performed or to be performed within such political subdivision's territory.
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 344, SubChapter D 344.73  
30 TAC Chapter 344, SubChapter D 344.73(1)  
30 TAC Chapter 344, SubChapter D 344.73(2)  
30 TAC Chapter 344, SubChapter D 344.73(3)  
30 TAC Chapter 344, SubChapter D 344.73(4)
  - Description: Failure by a licensed irrigator to properly connect the backflow prevention device to the public or private potable water supply.
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 344, SubChapter D 344.77(a)  
30 TAC Chapter 344, SubChapter D 344.77(a)(1)  
30 TAC Chapter 344, SubChapter D 344.77(a)(2)  
30 TAC Chapter 344, SubChapter D 344.77(a)(3)
  - Description: Failure to install spray or rotary heads on an irrigation system in accordance with the manufacturer's recommended installation specifications relating to minimum standards for spacing.
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 344, SubChapter F 344.94(a)
  - Description: Failure by a licensed irrigator to specify their name, license #, business address and telephone #, date the agreement was signed by each party, total agreed price, the design # or a copy of the design, on the agreement to install an irrigation system and the name, mailing address and telephone # of the Commission.
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 344, SubChapter F 344.96
  - Description: Failure by a licensed irrigator to present the customer, on all installations of new irrigation systems (i.e. excluding remodeling and renovation), a written statement of guarantees for materials and labor furnished in the installation of the irrigation system and honor the warranty.
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 344, SubChapter D 344.72
  - Description: Failure by a licensed irrigator to design, install, maintain, repair, or service an irrigation system in a manner that promotes water conservation.
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 344, SubChapter D 344.77(e)  
30 TAC Chapter 344, SubChapter D 344.77(e)(1)  
30 TAC Chapter 344, SubChapter D 344.77(e)(2)
  - Description: Failure by a licensed irrigator to meet the minimum standards for depth of coverage of piping.

- 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  
MARK P. CHOATE;  
RN103747309**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-0526-LII-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Mark P. Choate ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCC. CODE ch. 1903. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by George A. (Tony) Mallers of the law firm Cowles & Thompson, P.C., appear before the Commission and together stipulate that:

1. Respondent owns and operates a landscaping business located at 4728 Dozier Road in Carrollton, Dallas County, Texas (the "Business"). Respondent holds TCEQ Irrigator License No. LI0003675, and sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems and is required to be licensed under 30 TEX. ADMIN. CODE ch. 30. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE §§ 5.013 and 37.002 because it alleges violations of TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of eighteen thousand one hundred five dollars (\$18,105.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid six hundred five dollars (\$605.00) of the administrative penalty. The remaining amount of seventeen thousand five hundred dollars (\$17,500.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of five hundred dollars (\$500.00) each. The first monthly

*MPC*  
*4-12-11*

payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. During a record review conducted on November 5, 2009, a TCEQ Central Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 344.35(d)(2) and (d)(3) by failing to obtain all permits and inspections required to install an irrigation system. Specifically, between October 2, 2008 and February 20, 2009, Respondent failed to obtain the required permits before installing seventy-one irrigation systems at the following addresses (collectively referred to as the "Sites") in the Extraterritorial Jurisdiction of San Antonio in Bexar County, Texas.

4315	Albert Martin	5123	Cactus Thorn	4531	Fort Boggy
4403	Albert Martin	5142	Cactus Thorn	4539	Fort Boggy
4415	Albert Martin	5154	Cactus Thorn	4543	Fort Boggy
4418	Albert Martin	12007	Coletto Creek	12502	Green Darner
4419	Albert Martin	12506	Desert Palm	12611	Green Darner
4430	Albert Martin	11910	Edward Conrad	12627	Green Darner
4410	Amos Pollard	11514	Elijah Stapp	4314	James Bowie
4411	Amos Pollard	12018	Elijah Stapp	4526	Jarrell
4418	Amos Pollard	12106	Elijah Stapp	4542	Jarrell
4419	Amos Pollard	12110	Elijah Stapp	4542	Jarrell
4422	Amos Pollard	4519	Fort Boggy	4415	Jesse Bowman
4018	Buffalo Bur	4523	Fort Boggy	4419	Jesse Bowman
5119	Cactus Thorn	4527	Fort Boggy	4422	Jesse Bowman

*MPC*  
*4-18-11*

12526	Lost Maples	12751	Pronghorn Oak	4630	Thomas Rusk
12418	Prince Solms	12754	Pronghorn Oak	4634	Thomas Rusk
12422	Prince Solms	12755	Pronghorn Oak	4638	Thomas Rusk
12426	Prince Solms	12758	Pronghorn Oak	4647	Thomas Rusk
12427	Prince Solms	12759	Pronghorn Oak	4702	Thomas Rusk
12734	Pronghorn Oak	12762	Pronghorn Oak	4710	Thomas Rusk
12735	Pronghorn Oak	12766	Pronghorn Oak	4714	Thomas Rusk
12738	Pronghorn Oak	12514	Tersk	4715	Thomas Rusk
12743	Pronghorn Oak	12518	Tersk	4718	Thomas Rusk
12746	Pronghorn Oak	12522	Tersk	4719	Thomas Rusk
12750	Pronghorn Oak	12526	Tersk		

2. Respondent received notice of the violations on or about March 2, 2010.

### III. DENIALS

Respondent generally denies each Allegation in Section II.

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Mark P. Choate, Docket No. 2010-0526-LII-E" to:

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

2. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
    - i. Implement measures and procedures designed to ensure that all required permits and inspections are obtained for irrigation systems installed by Respondent in the future, in accordance with 30 TEX. ADMIN. CODE § 344.35;
    - ii. Submit to TCEQ at the addresses listed in Ordering Provision No. 2.c., below, a list of the Sites for which all required permits and inspections have been obtained. The list shall include the permit date, inspection date, and address of each Site, shall be accompanied by detailed supporting documentation, including copies of each permit, copies of each inspection report, receipts and/or other records, and shall contain written certification as described in Ordering Provision No. 2.c., below;

*mpe*  
*4-18-11*

and

- iii. For the Sites for which no permits or inspections have been obtained, mail to the property owner of each Site, via certified mail, return receipt requested, a letter requesting permission to enter the Site for the sole purpose of having the irrigation system inspected, and notifying the property owner that failure to respond within 30 days of the date of the letter will constitute a refusal to grant access.
- b. Within 60 days after the effective date of this Agreed Order, Respondent shall:
- i. Obtain all required permits and complete all required inspections at the Sites referenced in Ordering Provision No. 2.a.iii., above, to which Respondent has been granted access by the property owner, in accordance with 30 TEX. ADMIN. CODE § 344.35;
  - ii. Or, if Respondent is refused access to a Site by the property owner or the property owner fails to timely respond in writing to the request for access, submit to TCEQ at the addresses listed in Ordering Provision No. 2.c., for each Site at which Respondent has either been refused access or has not received a response from the property owner, the following documentation:
    - A. A copy of the letter sent to the property owner pursuant to Ordering Provision No. 2.a.iii., above;
    - B. A copy of the signed certified mail "green card" for each letter, or a copy of the envelope if the letter is returned to Respondent without a "green card" signature; and
    - C. Written certification as described in Ordering Provision No. 2.c., below, certifying that the property owner failed to respond or refused to grant Respondent access to the Site.
  - iii. The requirements contained in Ordering Provision No. 2.b.i. and 2.b.ii. shall be satisfied upon Respondent's receipt of written confirmation from the TCEQ Order Compliance Team that all documentation required by Ordering Provision No. 2.c. has been received.
- c. Within 75 days after the effective date of the Commission Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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

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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:

Tracy Miller  
Landscape Irrigation Program, MC-174  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Business operations referenced in this Agreed Order.
5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

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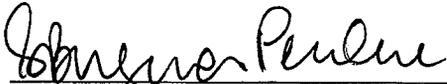
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
  
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director

6/10/2011

\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Mark P. Choate, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



\_\_\_\_\_  
Signature - Mark P. Choate

4-18-11

\_\_\_\_\_  
Date

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*4-18-11*