

**Michael J. Paddack**  
**RN105944334**  
**Docket No. 2012-0237-LII-E**

**Order Type:**

Default Order

**Findings Order Justification:**

N/A

**Media:**

LII

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

10401 Hansa Drive, Austin, Travis County; 2503 Farleigh Lane, Cedar Park, Travis County

**Type of Operation:**

landscaping business

**Other Significant Matters:**

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: Respondent holds irrigator license no. LI0018736; which expires on June 30, 2013.

Interested Third-Parties: None

**Texas Register Publication Date:** August 17, 2012**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$1,968**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$1,968**Compliance History Classifications:**

Person/CN – N/A

Site/RN – N/A

**Major Source:** No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** September 2002**Investigation Information****Complaint Date(s):** September 6, 2011

Complainant information: Alleged that Respondent installed an irrigation system that was leaking and would not correct it, installed the system without obtaining a permit, and did not have the backflow prevention device tested and inspected.

**Date(s) of Investigation:** October 7, 2011**Date(s) of NOV(s):** N/A**Date(s) of NOE(s):** November 9, 2011

**Michael J. Paddack**  
**RN105944334**  
**Docket No. 2012-0237-LII-E**

**Violation Information**

1. Failed to obtain a city permit and inspections required to install an irrigation system [30 TEX. ADMIN. CODE § 344.35(d)(2)].
2. Failed to place a permanent sticker on the controller and provide a copy of the design plan [30 TEX. ADMIN. CODE § 344.35(d)(12)].
3. Failed to honor the three year warranty provided to the customer for the irrigation system [30 TEX. ADMIN. CODE § 344.72(a)].
4. Failed to test the backflow prevention device upon installation of the irrigation system [30 TEX. ADMIN. CODE § 344.52(c)].
5. Failed to include the required TCEQ statement on all written estimates, proposals, bids and invoices, and failed to ensure that the irrigator's seal was clearly visible and legible on the invoice [30 TEX. ADMIN. CODE §§ 344.42(a) and 344.71(b)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately:
  - a. Implement measures and procedures to ensure that the backflow prevention device for irrigation systems is tested upon installation of the system; and
  - b. Begin including the required TCEQ statement on all invoices, bills, and written estimates relating to the installation or repair of an irrigation system.
2. Within 15 days, submit written certification demonstrating compliance with Technical Requirement No. 1.
3. Within 30 days:
  - a. Implement measures and procedures to ensure that all permits and inspections that are required for the installation of an irrigation system are obtained;
  - b. Implement measures and procedures to ensure that all irrigation system plans and proposals are signed, sealed, and dated;
  - c. Implement measures and procedures to ensure that a permanent sticker with the irrigator's name, license number, company name, telephone number, and the dates of the warranty period is affixed to each controller on all irrigation systems; and
  - d. Implement measures and procedures to ensure that as-built irrigation plans for irrigation systems are provided to customers.
3. Within 45 days, submit certification demonstrating compliance with Technical Requirement No. 3.

**Litigation Information**

**Date Petition(s) Filed:** May 24, 2012  
**Date Green Card(s) Signed:** Unclaimed  
**Date Answer(s) Filed:** N/A

**Michael J. Paddack**  
**RN105944334**  
**Docket No. 2012-0237-LII-E**

**Contact Information**

**TCEQ Attorneys:** Mike Fishburn, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Eli Martinez, Public Interest Counsel, (512) 239-3974

**TCEQ Enforcement Coordinator:** Nadia Hameed, Enforcement Division, (713) 767-3629

**TCEQ Regional Contact:** Barry Kalda, Austin Regional Office, (512) 339-2929

**Respondent:** Michael J. Paddack, 2503 Farleigh Lane, Cedar Park, Texas 78613

**Respondent's Attorney:** N/A

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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>	17-Jan-2012	<b>Screening</b>	24-Jan-2012	<b>EPA Due</b>	
	<b>PCW</b>	9-May-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Michael J. Paddock dba Rain Pro		
<b>Reg. Ent. Ref. No.</b>	RN105944334		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	43403	<b>No. of Violations</b>	5
<b>Docket No.</b>	2012-0237-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>	John Muennink
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,625
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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 for compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$347	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$350	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,625
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	21.1%	<b>Adjustment</b>	\$343
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement to recover the avoided cost associated to the violations.
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<b>Final Penalty Amount</b>	\$1,968
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,968
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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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	No deferral offered for a non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$1,968
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**Screening Date** 24-Jan-2012

**Docket No.** 2012-0237-LII-E

**PCW**

**Respondent** Michael J. Paddock dba Rain Pro

*Policy Revision 2 (September 2002)*

**Case ID No.** 43403

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105944334

**Media [Statute]** Irrigators

**Enf. Coordinator** John Muennink

### 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)**

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**

No adjustment for compliance history.

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

Screening Date 24-Jan-2012

Docket No. 2012-0237-LII-E

PCW

Respondent Michael J. Paddock dba Rain Pro

Policy Revision 2 (September 2002)

Case ID No. 43403

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105944334

Media [Statute] Irrigators

Enf. Coordinator John Muennink

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 344.35(d)(2)

Violation Description Failed to obtain a city permit and inspections required to install an irrigation system, as documented during a record review conducted on October 7, 2011. Specifically, the Respondent installed an irrigation system at 10401 Hansa Drive, Austin, Texas, without a permit from the City of Austin and without performing inspections as required by the City of Austin.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 Number of violation days 127

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$59

Violation Final Penalty Total \$303

This violation Final Assessed Penalty (adjusted for limits) \$303

## Economic Benefit Worksheet

**Respondent** Michael J. Paddock dba Rain Pro  
**Case ID No.** 43403  
**Req. Ent. Reference No.** RN105944334  
**Media** Irrigators  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$15	2-Jun-2011	31-Jul-2012	1.16	\$1	n/a	\$1

Notes for DELAYED costs

Estimated expense to implement measures designed to ensure that a city permit is obtained and that inspections are conducted prior to installing an irrigation system. The Date Required is the date that the installation began. The Final Date is the date that corrective measures are estimated to be completed.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$55	2-Jun-2011	7-Oct-2011	1.27	\$3	\$55	\$58
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for not obtaining a city permit and performing required inspections. The Date Required is the date that the installation began. The Final Date is the date of the investigation.

Approx. Cost of Compliance

\$70

**TOTAL**

\$59

Screening Date 24-Jan-2012

Docket No. 2012-0237-LII-E

PCW

Respondent Michael J. Paddock dba Rain Pro

Policy Revision 2 (September 2002)

Case ID No. 43403

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105944334

Media [Statute] Irrigators

Enf. Coordinator John Muennink

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 344.35(d)(12)

Violation Description Failed to place a permanent sticker on the controller and provide a copy of the design plan, as documented during a record review conducted on October 7, 2011. Specifically, the Respondent did not provide a permanent sticker with the irrigator's name, license number, company name, telephone number, and the dates of the warranty period on each controller of the irrigation system and did not provide an as-built irrigation plan for the irrigation system installed at 10401 Hansa Drive, Austin, Texas.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

Matrix Notes The Respondent failed to meet 100% of the rule requirement.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 Number of violation days 2

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

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 \$54

Violation Final Penalty Total \$303

This violation Final Assessed Penalty (adjusted for limits) \$303

## Economic Benefit Worksheet

**Respondent** Michael J. Paddock dba Rain Pro  
**Case ID No.** 43403  
**Req. Ent. Reference No.** RN105944334  
**Media** Irrigators  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$15	2-Jun-2011	31-Jul-2012	1.16	\$1	n/a	\$1

Notes for DELAYED costs

Estimated expense to implement measures designed to ensure that the irrigation system proposal is signed, sealed, and dated; the TCEQ statement is included on the invoice provided to the customer; a permanent sticker with the irrigator's name, license number, company name, telephone number, and the dates of the warranty period on each controller of the irrigation system is provided; and an as-built irrigation plan is provided to the customer for future installations of irrigation systems. The Date Required is the date that the installation began. The Final Date is the date that corrective measures are estimated to be completed.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$50	2-Jun-2011	7-Oct-2011	1.27	\$3	\$50	\$53
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for not providing an as-built irrigation plan. The Date Required is the date that the installation began. The Final Date is the date of the investigation.

Approx. Cost of Compliance \$65

**TOTAL** \$54

Screening Date 24-Jan-2012

Docket No. 2012-0237-LII-E

PCW

Respondent Michael J. Paddock dba Rain Pro

Policy Revision 2 (September 2002)

Case ID No. 43403

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105944334

Media [Statute] Irrigators

Enf. Coordinator John Muennink

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 344.72(a)

Violation Description Failed to honor the three year warranty provided to the customer for the irrigation system installed at 10401 Hansa Drive, Austin, Texas, as documented during a record review conducted on October 7, 2011.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes The Respondent failed to meet 100% of the rule requirement.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 236 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$179 Violation Final Penalty Total \$303

This violation Final Assessed Penalty (adjusted for limits) \$303

## Economic Benefit Worksheet

**Respondent** Michael J. Paddock dba Rain Pro  
**Case ID No.** 43403  
**Req. Ent. Reference No.** RN105944334  
**Media** Irrigators  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

### 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)	\$150	10-May-2011	10-May-2014	3.92	\$29	\$150	\$179

Notes for AVOIDED costs

Avoided cost for not fulfilling obligations of the three year warranty. The Date Required is the date that the warranty was issued. The Final Date is the end of the warranty.

Approx. Cost of Compliance \$150

**TOTAL** \$179

Screening Date 24-Jan-2012

Docket No. 2012-0237-LII-E

PCW

Respondent Michael J. Paddock dba Rain Pro

Policy Revision 2 (September 2002)

Case ID No. 43403

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105944334

Media [Statute] Irrigators

Enf. Coordinator John Muennink

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 344.52(c)

Violation Description Failed to test the backflow prevention device upon installation of the irrigation system at 10401 Hansa Drive, Austin, Texas, as documented during a record review conducted on October 7, 2011.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Human health or the environment could be exposed to a significant amount of pollutants that would exceed levels that are protective of human health or environmental receptors.

Adjustment \$1,875

\$625

Violation Events

Number of Violation Events 1 125 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$625

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$54

Violation Final Penalty Total \$757

This violation Final Assessed Penalty (adjusted for limits) \$757

## Economic Benefit Worksheet

**Respondent** Michael J. Paddock dba Rain Pro  
**Case ID No.** 43403  
**Req. Ent. Reference No.** RN105944334  
**Media** Irrigators  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$15	4-Jun-2011	31-Jul-2012	1.16	\$1	n/a	\$1

Notes for DELAYED costs

Estimated expense to implement measures designed to ensure that the backflow prevention device is tested upon irrigation system installation. The Date Required is the date that the installation was completed. The Final Date is the date that corrective measures are estimated to be completed.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$50	4-Jun-2011	7-Oct-2011	1.26	\$3	\$50	\$53
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for not testing the backflow prevention device upon installation of the irrigation system. The Date Required is the date that the installation was completed. The Final Date is the date of the investigation.

Approx. Cost of Compliance

\$65

**TOTAL**

\$54

Screening Date 24-Jan-2012

Docket No. 2012-0237-LII-E

PCW

Respondent Michael J. Paddock dba Rain Pro

Policy Revision 2 (September 2002)

Case ID No. 43403

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105944334

Media [Statute] Irrigators

Enf. Coordinator John Muennink

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code §§ 344.42(a) and 344.71(b)

Violation Description

Failed to include the required TCEQ statement on all written estimates, proposals, bids and invoices, as documented during a record review conducted on July 29, 2011. Specifically, the Respondent failed to include the TCEQ statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: www.tceq.state.tx.us" on the invoice provided to the customer for the irrigation system installed at 10401 Hansa Drive, Austin, Texas. Also, failed to ensure that the irrigator's seal was clearly visible and legible on the invoice.

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 2 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$303

This violation Final Assessed Penalty (adjusted for limits) \$303

## Economic Benefit Worksheet

**Respondent** Michael J. Paddock dba Rain Pro  
**Case ID No.** 43403  
**Req. Ent. Reference No.** RN105944334  
**Media** Irrigators  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

Economic Benefit ("EB") for Violation No. 5 is included in the EB for Violation No. 2.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN603683939 PADDACK, MICHAEL J.	Classification:	Rating:
Regulated Entity:	RN105944334 PADDACK, MICHAEL J.	Classification:	Site Rating:
ID Number(s):	LANDSCAPE IRRIGATION LICENSING	LICENSE	LI0018736
Location:	2503 FARLEIGH LANE, CEDAR PARK, TX		
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	January 18, 2012		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 18, 2007 to January 18, 2012		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:			
Name:	John Muennink	Phone:	(713) 422-8970

## Site Compliance History Components

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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MICHAEL J. PADDACK;  
RN105944334**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2012-0237-LII-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 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 Michael J. Paddack ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a landscaping business located at 2503 Farleigh Lane in Cedar Park, Travis County, Texas (the "Business"). Respondent holds TCEQ irrigator license no. LI0018736, 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. During a record review conducted on October 7, 2011, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to obtain a city permit and inspections required to install an irrigation system. Specifically, Respondent installed an irrigation system at 10401 Hansa Drive in Austin, Travis County, Texas (the "Site"), without a permit from the City of Austin and without performing inspections as required by the City of Austin;
  - b. Failed to place a permanent sticker on the controller and provide a copy of the design plan. Specifically, Respondent did not provide a permanent sticker with the irrigator's name, license number, company name, telephone number, and the dates of the warranty period on each controller of the irrigation system and did not provide an as-built irrigation plan for the irrigation system installed at the Site;
  - c. Failed to honor the three year warranty provided to the customer for the irrigation system installed at the Site;
  - d. Failed to test the backflow prevention device upon installation of the irrigation system at the Site; and

- e. Failed to include the required TCEQ statement on all written estimates, proposals, bids and invoices, and failed to ensure that the irrigator's seal was clearly visible and legible on the invoice. Specifically, Respondent failed to include the TCEQ statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)" on the invoice provided to the customer for the irrigation system installed at the Site.
3. Respondent received notice of the violations on or about November 14, 2011.
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 Michael J. Paddack" (the "EDPRP") in the TCEQ Chief Clerk's office on May 24, 2012.
5. By letter dated May 24, 2012, 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. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
6. 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.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to obtain a city permit and inspections required to install an irrigation system, in violation of 30 TEX. ADMIN. CODE § 344.35(d)(2).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to place a permanent sticker on the controller and provide a copy of the design plan, in violation of 30 TEX. ADMIN. CODE § 344.35(d)(12).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to honor the three year warranty provided to the customer for the irrigation system installed at the Site, in violation of 30 TEX. ADMIN. CODE § 344.72(a).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to test the backflow prevention device upon installation of the irrigation system at the Site, in violation of 30 TEX. ADMIN. CODE § 344.52(c).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to include the required TCEQ statement on all written estimates, proposals, bids and invoices, and failed to ensure that the irrigator's seal was clearly visible and legible on the invoice, in violation of 30 TEX. ADMIN. CODE §§ 344.42(a) and 344.71(b).

7. 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 § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
8. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of one thousand nine hundred sixty-eight dollars (\$1,968.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### **ORDERING PROVISIONS**

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

1. Respondent is assessed an administrative penalty in the amount of one thousand nine hundred sixty-eight dollars (\$1,968.00) 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: Michael J. Paddack; Docket No. 2012-0237-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
3. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall:

- i. Implement measures and procedures to ensure that the backflow prevention device for irrigation systems is tested upon installation of the system, in accordance with 30 TEX. ADMIN. CODE § 344.52 (Conclusion of Law No. 5); and
  - ii. Begin including the required statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)" on all invoices, bills, and written estimates relating to the installation or repair of an irrigation system, in accordance with 30 TEX. ADMIN. CODE § 344.71 (Conclusion of Law No. 6).
- b. Within 15 days after the effective of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provision No. 3.a.
- c. Within 30 days after the effective date of this Order, Respondent shall:
  - i. Implement measures and procedures to ensure that all permits and inspections that are required for the installation of an irrigation system are obtained, in accordance with 30 TEX. ADMIN. CODE § 344.35 (Conclusion of Law No. 2) ;
  - ii. Implement measures and procedures to ensure that all irrigation system plans and proposals are signed, sealed, and dated, in accordance with 30 TEX. ADMIN. CODE § 344.43 (Conclusion of Law No. 6);
  - iii. Implement measures and procedures to ensure that a permanent sticker with the irrigator's name, license number, company name, telephone number, and the dates of the warranty period is affixed to each controller on all irrigation systems, in accordance with 30 TEX. ADMIN. CODE § 344.63 (Conclusion of Law No. 3); and
  - iv. Implement measures and procedures to ensure that as-built irrigation plans for irrigation systems are provided to customers, in accordance with 30 TEX. ADMIN. CODE § 344.35 (Conclusion of Law No. 3).
- d. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provision No. 3. c.
- e. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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 certifications and supporting 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:

FOSD Water Program, Team Leader  
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 Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF STEVEN M. FISHBURN**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Steven M. Fishburn. 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 Michael J. Paddack" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on May 24, 2012.

The EDPRP was mailed to Respondent's last known address on May 24, 2012, 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 Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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."

Steven M. Fishburn, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 19<sup>th</sup> day of July, A.D. 2012.

Notary Signature

