

Jeff A. Arbogust  
RN106399892  
Docket No. 2012-1513-LII-E

**Order Type:**

Default Order

**Media:**

LII

**Small Business:**

Yes

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

10211 Farm-to-Market Road 969, Austin, Travis County;  
2203 Terradyne Drive, Pflugerville, Travis County

**Type of Operation:**

landscaping business

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** March 1, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$1,393

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$1,393

**Compliance History Classifications:**

Person/CN – N/A  
Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** May 24, 2012

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** June 29, 2012

Jeff A. Arbogust  
RN106399892  
Docket No. 2012-1513-LII-E

**Violation Information**

1. Failed to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system [TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(a)].
2. Failed to refrain from using or attempting to use the license, including the license number, of an irrigator, installer, irrigation technician, or irrigation inspector to whom a license is issued [30 TEX. ADMIN. CODE § 344.34(a)].
3. Failed to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system the irrigator's name, license number, and the required TCEQ statement [30 TEX. ADMIN. CODE § 344.71(b)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

Respondent obtained an irrigator technician license (IT0003475) on June 12, 2012.

**Technical Requirements:**

1. Immediately:
  - a. Cease performing all irrigation services unless under the direct supervision of a licensed irrigator; and
  - b. Cease using or attempting to use the license or license number of someone else who is a licensed irrigator.
2. Within 15 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** December 17, 2012; January 2, 2013

**Date Green Card(s) Signed:** Unclaimed; Unclaimed

**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Ryan Rutledge, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Rebecca Johnson, Enforcement Division, 361-825-3423

**TCEQ Regional Contact:** Carolyn Runyon, Austin Regional Office, 512-339-2929

**Respondent:** Jeff Arbogust, 10211 Farm-to-Market Road 969, Austin, TX 78724-6314

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	2-Jul-2012		
	<b>PCW</b>	13-Nov-2012	<b>Screening</b>	16-Jul-2012
			<b>EPA Due</b>	

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Jeff A. Arbogust
<b>Reg. Ent. Ref. No.</b>	RN106399892
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	44608	<b>No. of Violations</b>	3
<b>Docket No.</b>	2012-1513-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>	Rebecca Johnson
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$5,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,250
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	
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>
Notes	No adjustment for compliance history.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
Notes	The Respondent does not meet the culpability criteria.			

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$145	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$186		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	11.4%	<b>Adjustment</b>	\$143
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes	Other factors adjustment for the recovery of the avoided cost associated to Violation Nos. 1 and 3.		

**Final Penalty Amount** \$1,393

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,393
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$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.			

<b>PAYABLE PENALTY</b>	\$1,393
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Screening Date 16-Jul-2012

Docket No. 2012-1513-LII-E

PCW

Respondent Jeff A. Arbogust

Policy Revision 3 (September 2011)

Case ID No. 44608

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106399892

Media [Statute] Irrigators

Enf. Coordinator Rebecca Johnson

### 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 Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

#### >> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 0%

<b>Screening Date</b>	16-Jul-2012	<b>Docket No.</b>	2012-1513-LII-E	<b>PCW</b>
<b>Respondent</b>	Jeff A. Arbogust			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44608			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN106399892			
<b>Media [Statute]</b>	Irrigators			
<b>Enf. Coordinator</b>	Rebecca Johnson			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="15.0%"/>

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0.0%"/>

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

**Violation Base Penalty**

**Good Faith Efforts to Comply**

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 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** Jeff A. Arbogust  
**Case ID No.** 44608  
**Reg. Ent. Reference No.** RN106399892  
**Media Violation No.** Irrigators  
 1

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description**   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]	\$111	12-Apr-2012	24-May-2012	1.03	\$6	\$111	\$117
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for obtaining an irrigator license. The Date Required is the date the irrigation system was installed. The Final Date is the date of the investigation.

Approx. Cost of Compliance \$111

**TOTAL** \$117

**Screening Date** 16-Jul-2012  
**Respondent** Jeff A. Arbogust  
**Case ID No.** 44608  
**Reg. Ent. Reference No.** RN106399892  
**Media [Statute]** Irrigators  
**Enf. Coordinator** Rebecca Johnson

**Docket No.** 2012-1513-LII-E

**PCW**

*Policy Revision 3 (September 2011)*

*PCW Revision August 3, 2011*

**Violation Number**

**Rule Cite(s)**

**Violation Description**

Failed to refrain from using or attempting to use the license, including the license number, of an irrigator, installer, irrigation technician, or irrigation inspector to whom a license is issued. Specifically, the vehicle used by the Respondent during the irrigation system installation on April 12, 2012 at 2203 Terradyne Drive, Pflugerville, Texas, displayed an irrigator license number that was not issued to the Respondent or an individual employed by the Respondent.

**Base Penalty**

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

**OR**

		Harm			
Release		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

		Major	Moderate	Minor	
Falsification	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="5.0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

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 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** Jeff A. Arbogust  
**Case ID No.** 44608  
**Reg. Ent. Reference No.** RN106399892  
**Media Violation No.** Irrigators  
 2

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description**   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)	\$50	12-Apr-2012	25-Mar-2013	0.95	\$2	n/a	\$2

**Notes for DELAYED costs**  
 Estimated cost to remove the license number from the vehicle. The Date Required is the date the license number was observed on the vehicle at the irrigation installation site. The Final Date is the projected compliance date.

### Avoided Costs

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

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

**Notes for AVOIDED costs**  
 (Empty box for notes)

**Approx. Cost of Compliance**   \$50

**TOTAL**   \$2

Screening Date 16-Jul-2012

Docket No. 2012-1513-LII-E

PCW

Respondent Jeff A. Arbogust

Policy Revision 3 (September 2011)

Case ID No. 44608

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106399892

Media [Statute] Irrigators

Enf. Coordinator Rebecca Johnson

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 344.71(b)

Violation Description

Failed to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system the irrigator's name and license number and the required 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".

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$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 \$26

Violation Final Penalty Total \$279

This violation Final Assessed Penalty (adjusted for limits) \$279

# Economic Benefit Worksheet

**Respondent** Jeff A. Arbogust  
**Case ID No.** 44608  
**Reg. Ent. Reference No.** RN106399892  
**Media Violation No.** Irrigators  
 3

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description**   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]	\$25	27-Mar-2012	24-May-2012	1.08	\$1	\$25	\$26
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for including the required TCEQ statement on the irrigation proposal. The Date Required is the date of the irrigation proposal. The Final Date is the date of the record review.

Approx. Cost of Compliance \$25

**TOTAL** \$26

# Compliance History Report

Customer/Respondent/Owner-Operator: CN604075648 ARBOGUST, JEFF A. Classification: Rating:  
Regulated Entity: RN106399892 ARBOGUST, JEFF A. Classification: Site Rating:  
ID Number(s): LANDSCAPE IRRIGATION LICENSING LICENSE IT0003475  
WASTEWATER LICENSING NON LICENSED ID NUMBER R11106399892  
Location: 10211 FM 969, AUSTIN, TX, 78724  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: August 01, 2012  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 01, 2007 to August 01, 2012  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Rebecca Johnson Phone: (361) 825-3423

## 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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A 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.)  
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  
JEFF A. ARBOGUST;  
RN106399892**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2012-1513-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 Jeff A. Arbogust ("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 10211 Farm-to-Market Road 969 in Austin, Travis County, Texas (the "Business"). Respondent 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 May 24, 2012, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system. Specifically, Respondent installed an irrigation system at 2203 Terradyne Drive in Pflugerville, Travis County, Texas on or about April 12, 2012, without a valid irrigator license;
  - b. Failed to refrain from using or attempting to use the license, including the license number, of an irrigator, installer, irrigation technician, or irrigation inspector to whom a license is issued. Specifically, the vehicle used by Respondent during the irrigation system installation on April 12, 2012, at 2203 Terradyne Drive, Pflugerville, Travis County, Texas, displayed an irrigator license number that was not issued to Respondent or an individual employed by Respondent;
  - c. Failed to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system the irrigator's name and license number and the required 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)".

3. Respondent received notice of the violations on or about July 4, 2012.
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 Jeff A. Arbogust" (the "EDPRP") in the TCEQ Chief Clerk's office on December 17, 2012.
5. By letter dated December 17, 2012, sent to Respondent's last known address via certified mail, return receipt requested, 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."
6. The Executive Director re-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 Jeff A. Arbogust" (the "EDPRP") in the TCEQ Chief Clerk's office on January 2, 2013.
7. By letter dated January 2, 2013, 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.
8. 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.
9. The Executive Director recognizes that Respondent obtained an irrigator technician license (IT0003475) on June 12, 2012.

#### **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 hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system, in violation of TEX. WATER CODE § 37.003, TEX. OCC. CODE § 1903.251, and 30 TEX. ADMIN. CODE § 30.5(a).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to refrain from using or attempting to use the license, including the license number, of an irrigator, installer, irrigation technician, or irrigation inspector to whom a license is issued, in violation of 30 TEX. ADMIN. CODE § 344.34(a).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system the irrigator's name and license number and the required 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), in violation of 30 TEX. ADMIN. CODE § 344.71(b).

5. As evidenced by Findings of Fact Nos. 4 through 7, 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).
6. As evidenced by Finding of Fact No. 8, 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.
7. 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.
8. An administrative penalty in the amount of one thousand three hundred ninety-three dollars (\$1,393.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. 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 three hundred ninety-three dollars (\$1,393.00) 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: Jeff A. Arbogust; Docket No. 2012-1513-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. Cease performing all irrigation services unless under the direct supervision of a licensed irrigator, in accordance with 30 TEX. ADMIN. CODE §§ 344.36 and 344.71(c); and
    - ii. Cease using or attempting to use the license or license number of someone else who is a licensed irrigator, in accordance with 30 TEX. ADMIN. CODE § 344.34.
  - b. Within 15 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification 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 certification 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.
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 RYAN RUTLEDGE**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Ryan Rutledge. 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.

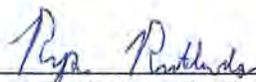
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jeff A. Arbogust" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 17, 2012.

By letter dated December 17, 2012, sent to Respondent's last known address via certified mail, return receipt requested, 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."

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 Jeff A. Arbogust" (the "EDPRP") was re-filed in the TCEQ Chief Clerk's office on January 2, 2013.

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).

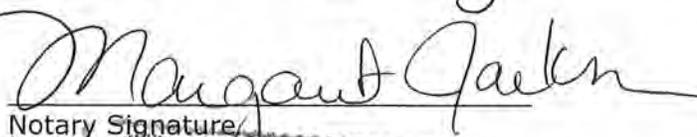
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Ryan Rutledge, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Ryan Rutledge, 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 4 day of February, 2013.



Notary Signature

