

Robert Lewis McAllister
RN103473872
Docket No. 2013-0924-LII-E

Order Type:

Default Order

Media:

LII

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

5104 David Strickland Road, Fort Worth, Tarrant County

Type of Operation:

landscape irrigator

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 14, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,250

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,250

Compliance History Classifications:

Person/CN – Not Applicable
Site/RN – Not Applicable

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Robert Lewis McAllister
RN103473872
Docket No. 2013-0924-LII-E

Investigation Information

Complaint Date(s): September 24, 2012
Complaint Information: Alleged that Respondent failed to honor a given warranty and failed to provide drawings to the home owner.

Date(s) of Investigation: October 8, 2012

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

Date(s) of NOE(s): April 29, 2013

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 include the irrigator license number and the required TCEQ statement on an estimate [30 TEX. ADMIN. CODE § 344.71(b)].
3. Failed to provide the irrigation system's owner with a written warranty covering the materials and labor and an irrigation plan indicating the actual installation of the irrigation system [30 TEX. ADMIN. CODE §§ 344.63(4) and 344.72(a)].
4. Failed to include on all forms of written and electronic advertisements for irrigation services the irrigator's license number in the form of "LI____" [30 TEX. ADMIN. CODE § 344.70(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
Respondent's irrigator license expired on July 31, 2013.

Technical Requirements:
N/A

Litigation Information

Date Petition(s) Filed: December 18, 2013

Date Green Card(s) Signed: December 20, 2013

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: Jeff Tate, Fort Worth Regional Office, (817) 588-5800

Respondent: Robert Lewis McAllister, 3408 Winifred Dr., Fort Worth, Texas 76133

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

| | | | | |
|--------------|-----------------|------------|------------------|-------------|
| DATES | Assigned | 6-May-2013 | | |
| | PCW | 7-Aug-2013 | Screening | 13-May-2013 |
| | | | EPA Due | |

| | |
|--|-------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Robert Lewis McAllister |
| Reg. Ent. Ref. No. | RN103473872 |
| Facility/Site Region | 4-Dallas/Fort Worth |
| Major/Minor Source | Minor |

| | | | |
|--|-----------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 46837 | No. of Violations | 4 |
| Docket No. | 2013-0924-LII-E | Order Type | 1660 |
| Media Program(s) | Irrigators | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Rebecca Johnson |
| | | EC's Team | Enforcement Team 5 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$5,000 |

Penalty Calculation Section

| | | |
|---|-------------------|---------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$1,250 |
|---|-------------------|---------|

| | | |
|--|---|-----|
| ADJUSTMENTS (+/-) TO SUBTOTAL 1 | | |
| Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage. | | |
| Compliance History | 0.0% Enhancement Subtotals 2, 3, & 7 | \$0 |

| | |
|--------------|---------------------------------------|
| Notes | No adjustment for compliance history. |
|--------------|---------------------------------------|

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

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

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

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

| | | |
|----------------------------|-------|-----------------------------------|
| Total EB Amounts | \$21 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$265 | |

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$1,250 |
|-----------------------------|-----------------------|---------|

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

Reduces or enhances the Final Subtotal by the indicated percentage.

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

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$1,250 |
|-----------------------------|---------|

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$1,250 |
|-----------------------------------|-------------------------------|---------|

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

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

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

| | |
|------------------------|---------|
| PAYABLE PENALTY | \$1,250 |
|------------------------|---------|

Screening Date 13-May-2013

Docket No. 2013-0924-LII-E

PCW

Respondent Robert Lewis McAllister

Policy Revision 3 (September 2011)

Case ID No. 46837

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103473872

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%

Screening Date 13-May-2013 **Docket No.** 2013-0924-LII-E **PCW**
Respondent Robert Lewis McAllister *Policy Revision 3 (September 2011)*
Case ID No. 46837 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN103473872
Media [Statute] Irrigators
Enf. Coordinator Rebecca Johnson

Violation Number

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. Specifically, the Respondent installed an irrigation system at 3611 Coral Gables Drive, Dallas, Texas, on June 1, 2012 without a permit from the City of Dallas and without performing inspections required by the City of Dallas.

Base Penalty

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

OR

| Release | Harm | | |
|-----------|----------------------|----------------------|----------------------|
| | Major | Moderate | Minor |
| Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> |

Percent

>> **Programmatic Matrix**

| Falsification | Major | Moderate | Minor |
|----------------------|---|----------------------|----------------------|
| <input type="text"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | <input type="text"/> |

Percent

Matrix Notes

100% of the rule requirement was not met.

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 checked="" type="text" value="x"/> |

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

| | Before NOV | NOV to EDPRP/Settlement Offer |
|----------|---|-------------------------------|
| | Extraordinary | <input type="text"/> |
| Ordinary | <input type="text"/> | <input type="text"/> |
| N/A | <input checked="" type="text" value="x"/> | (mark with x) |

Notes

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

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 Robert Lewis McAllister
Case ID No. 46837
Reg. Ent. Reference No. RN103473872
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) | \$100 | 1-Jun-2012 | 27-Jan-2014 | 1.66 | \$8 | n/a | \$8 |

Notes for DELAYED costs
 Estimated cost to obtain a permit and inspections required to install an irrigation system. The Date Required is the date the irrigation system was installed. The Final Date is the date 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] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$8

Screening Date 13-May-2013
Respondent Robert Lewis McAllister
Case ID No. 46837
Reg. Ent. Reference No. RN103473872
Media [Statute] Irrigators
Enf. Coordinator Rebecca Johnson

Docket No. 2013-0924-LII-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number

Rule Cite(s)

Violation Description

Failed to include the irrigator license number and 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 estimate dated May 15, 2012, for the irrigation system installed at 3611 Coral Gables Drive, Dallas, Texas.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | Percent |
|----------------------|---|----------------------|----------------------|-----------------------------------|
| <input type="text"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | <input type="text"/> | <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 checked="" 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 checked="" type="text" value="x"/> | (mark with x) |

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Robert Lewis McAllister
Case ID No. 46837
Reg. Ent. Reference No. RN103473872
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 | 15-May-2012 | 27-Jan-2014 | 1.70 | \$1 | n/a | \$1 |

Notes for DELAYED costs
 Estimated cost to implement measures to ensure that the TCEQ statement is included on all written estimates, proposals, bids, and invoices. The Date Required is the date of the irrigation system estimate. The Final Date is the date 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] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance \$15

TOTAL \$1

Screening Date 13-May-2013

Docket No. 2013-0924-LII-E

PCW

Respondent Robert Lewis McAllister

Policy Revision 3 (September 2011)

Case ID No. 46837

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103473872

Media [Statute] Irrigators

Enf. Coordinator Rebecca Johnson

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 344.63(4) and 344.72(a)

Violation Description

Failed to provide the irrigation system's owner with a written warranty covering the materials and labor and an irrigation plan indicating the actual installation of the irrigation system installed at 3611 Coral Gables Drive, Dallas, Texas.

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 2

346 Number of violation days

mark only one with an x

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

Violation Base Penalty \$500

Two single events are 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 \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$500

This violation Final Assessed Penalty (adjusted for limits) \$500

Economic Benefit Worksheet

Respondent Robert Lewis McAllister
Case ID No. 46837
Reg. Ent. Reference No. RN103473872
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) | \$100 | 1-Jun-2012 | 27-Jan-2014 | 1.66 | \$8 | n/a | \$8 |

Notes for DELAYED costs
 Estimated cost to provide a written warranty and irrigation plan for the irrigation system. The Date Required is the date the irrigation system was installed. The Final Date is the date 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] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$8

Screening Date 13-May-2013

Docket No. 2013-0924-LII-E

PCW

Respondent Robert Lewis McAllister

Policy Revision 3 (September 2011)

Case ID No. 46837

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103473872

Media [Statute] Irrigators

Enf. Coordinator Rebecca Johnson

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 344.70(b)

Violation Description

Failed to include in all forms of written and electronic advertisements for irrigation services, the irrigator's license number in the form of "LI_____". Specifically, the Respondent's web site: www.mcallister-landscape.com does not include the irrigator license number.

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

217 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 \$3

Violation Final Penalty Total \$250

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

Economic Benefit Worksheet

Respondent Robert Lewis McAllister
Case ID No. 46837
Reg. Ent. Reference No. RN103473872
Media Violation No. Irrigators
 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) | \$50 | 8-Oct-2012 | 27-Jan-2014 | 1.30 | \$3 | n/a | \$3 |

Notes for DELAYED costs: Estimated cost to include the license number on the Respondent's web site. The Date Required is the record review date. The Final Date is the date 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] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance \$50

TOTAL \$3



Compliance History Report

PUBLISHED Compliance History Report for CN601993835, RN103473872, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

| | | | |
|---|---|---------------------------------------|--------------------|
| Customer, Respondent, or Owner/Operator: | CN601993835, McAllister, Robert Lewis | Classification: NOT APPLICABLE | Rating: N/A |
| Regulated Entity: | RN103473872, MCALLISTER, ROBERT LEWIS | Classification: NOT APPLICABLE | Rating: N/A |
| Complexity Points: | N/A | Repeat Violator: | N/A |
| CH Group: | 14 - Other | | |
| Location: | 5104 DAVID STRICKLAND ROAD FORT WORTH, TEXAS 76119 TARRANT COUNTY | | |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | |
| ID Number(s): | LANDSCAPE IRRIGATION LICENSING LICENSE LI0006216 | | |

| | | | | | |
|---|---------------------------------------|---------------------|---------------|---------------------|------------|
| Compliance History Period: | September 01, 2007 to August 31, 2012 | Rating Year: | 2012 | Rating Date: | 09/01/2012 |
| Date Compliance History Report Prepared: | May 16, 2013 | | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | | |
| Component Period Selected: | May 15, 2008 to May 15, 2013 | | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History. | | | | | |
| Name: | Rebecca Johnson | | Phone: | (361) 825-3423 | |

Site and Owner/Operator History:

- | | |
|--|-----|
| 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 for #2, who is the current owner/operator? | N/A |
| 4) If YES for #2, 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 |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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
ROBERT LEWIS MCALLISTER;
RN103473872**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-0924-LII-E

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

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

FINDINGS OF FACT

1. Respondent owned and operated a landscape and irrigation system installation business located at 5104 David Strickland Road in Fort Worth, Tarrant County, Texas (the "Business"). The Respondent held TCEQ Irrigator License No. LI0006216, which expired on July 31, 2013, and sold, designed, offered consultations regarding, installed, maintained, altered, repaired, and/or serviced landscape irrigation systems. 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 8, 2012, 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 3611 Coral Gables Drive, Dallas, Tarrant County, Texas (the "Site"), on June 1, 2012 without a permit from the City of Dallas and without performing inspections required by the City of Dallas;
 - b. Failed to include the irrigator license number and 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 estimate dated May 15, 2012, for the irrigation system installed at the Site;
 - c. Failed to provide the irrigation system's owner with a written warranty covering the materials and labor and an irrigation plan indicating the actual installation of the irrigation system installed at the Site; and
 - d. Failed to include in all forms of written and electronic advertisements for irrigation services, the irrigator's license number in the form of "LI_____". Specifically, Respondent's web site: www.mcallister-landscape.com did not include Respondent's irrigator license number.
3. Respondent received notice of the violations on or about May 4, 2013.

4. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Robert Lewis McAllister" (the "EDFARP") in the TCEQ Chief Clerk's office on December 18, 2013.
5. The EDFARP was mailed to Respondent's last known address on December 18, 2013, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDFARP on December 20, 2013, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDFARP. Respondent failed to file an answer and failed to request a hearing.
7. The Executive Director recognizes that Respondent's Irrigator License expired on July 31, 2013.

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 include the irrigator license number and the required TCEQ statement on an estimate, in violation of 30 TEX. ADMIN. CODE § 344.71(b).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to provide the irrigation system's owner with a written warranty covering the materials and labor and an irrigation plan indicating the actual installation of the irrigation system, in violation of 30 TEX. ADMIN. CODE §§ 344.63(4) and 344.72(a),
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to include in all forms of written and electronic advertisements for irrigation services, the irrigator's license number in the form of "LI_____", in violation of 30 TEX. ADMIN. CODE § 344.70(b).
6. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. 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.
8. 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.
9. An administrative penalty in the amount of one thousand two hundred fifty dollars (\$1,250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

10. 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 two hundred fifty dollars (\$1,250.00) 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: Robert Lewis McAllister; Docket No. 2013-0924-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. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
5. 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.
6. 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.
7. 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.
8. 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.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RYAN RUTLEDGE

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

"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 First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Robert Lewis McAllister" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on December 18, 2013.

The EDFARP was mailed to Respondent's last known address on December 18, 2013, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDFARP on December 20, 2013, as evidenced by the signature on the card.

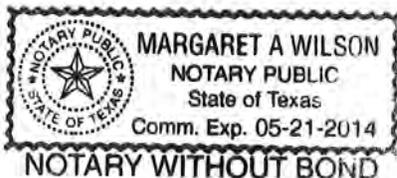
More than 20 days have elapsed since Respondent received notice of the EDFARP. Respondent failed to file an answer and failed to request a hearing."

Ryan Rutledge

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 18th day of FEBRUARY, A.D. 2014.



Margaret Wilson

Notary Signature