

Joshua G. Duke
RN105764138
Docket No. 2013-0808-LII-E

Order Type:

Default Order

Media:

LII

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

807 Northwest Drive, Longview, Gregg County; 537 Mill Creek Road, Longview, Gregg 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: August 15, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,390

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,390

Compliance History Classifications:

Person/CN – N/A
Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Joshua G. Duke
RN105764138
Docket No. 2013-0808-LII-E

Investigation Information

Complaint Date(s): August 2, 2012
Complaint Information: Alleged that Respondent installed an irrigation system that failed to meet TCEQ design regulations and was practicing business in a manner unfit for a licensed irrigation professional.

Date(s) of Investigation: August 3, 2012

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

Date(s) of NOE(s): January 30, 2013

Violation Information

1. Failed to display the irrigator license number on all vehicles used in the performance of irrigation installation, maintenance, alteration, repair, or service [30 TEX. ADMIN. CODE § 344.70(a)].
2. 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 statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-128, P.O. Box 13087, Austin, Texas 78711-3087. The TCEQ's website is www.tceq.state.tx.us" [30 TEX. ADMIN. CODE § 344.71(b)].
3. Failed to install a backflow prevention device [30 TEX. ADMIN. CODE § 344.50(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent is no longer a licensed irrigator as of August 1, 2012.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: March 19, 2014

Date Green Card(s) Signed: March 22, 2014

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: J. Amber Ahmed, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Aaron Tucker, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Amancio R. Gutierrez, Enforcement Division, (512) 239-3921

TCEQ Regional Contact: Michael Brashear, Tyler Regional Office, (903) 535-5100

Respondent Contact: Joshua G. Duke, 807 Northwest Drive, Longview, Texas 75604

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	25-Feb-2013	Screening	25-Apr-2013	EPA Due	
	PCW	26-Nov-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	Joshua G. Duke				
Reg. Ent. Ref. No.	RN105764138				
Facility/Site Region	5-Tyler	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	46718	No. of Violations	3
Docket No.	2013-0808-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Amancio R. Gutierrez
		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** **\$1,125**

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: \$295
 Approx. Cost of Compliance: \$775
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$1,125**

OTHER FACTORS AS JUSTICE MAY REQUIRE **23.6%** **Adjustment** **\$265**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance for Violation No. 3.

Final Penalty Amount **\$1,390**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$1,390**

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 **\$1,390**

Screening Date 25-Apr-2013

Docket No. 2013-0808-LII-E

PCW

Respondent Joshua G. Duke

Policy Revision 3 (September 2011)

Case ID No. 46718

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105764138

Media [Statute] Irrigators

Enf. Coordinator Amancio R. Gutierrez

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 25-Apr-2013

Docket No. 2013-0808-LII-E

PCW

Respondent Joshua G. Duke

Policy Revision 3 (September 2011)

Case ID No. 46718

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105764138

Media [Statute] Irrigators

Enf. Coordinator Amancio R. Gutierrez

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 344.70(a)

Violation Description

Failed to display the irrigator's license number on all vehicles used in the performance of irrigation installation, maintenance, alteration, repair, or service. Specifically, the Respondent did not display the irrigator's license number on all vehicles during the installation of an irrigation system at 537 Mill Creek Road, Longview, Texas that began in May 2012.

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

204 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 \$1

Violation Final Penalty Total \$309

This violation Final Assessed Penalty (adjusted for limits) \$309

Economic Benefit Worksheet

Respondent Joshua G. Duke
Case ID No. 46718
Reg. Ent. Reference No. RN105764138
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)	\$25	30-Jan-2013	27-Mar-2014	1.15	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to display the irrigator's license number on all vehicles. The Date Required is the record review date and the Final Date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25

TOTAL

\$1

Screening Date 25-Apr-2013

Docket No. 2013-0808-LII-E

PCW

Respondent Joshua G. Duke

Policy Revision 3 (September 2011)

Case ID No. 46718

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105764138

Media [Statute] Irrigators

Enf. Coordinator Amancio R. Gutierrez

Violation Number 2

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, license number, and the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-128, P.O. Box 13087, Austin, Texas 78711-3087. The TCEQ's website is www.tceq.state.tx.us." Specifically, invoices issued by the Respondent did not include the irrigator's name, license number, and the required TCEQ statement.

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 2.5%

Matrix Notes

30 to 70% of the rule requirement was not met.

Adjustment \$4,875

\$125

Violation Events

Number of Violation Events 1

204 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$125

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 \$125

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$12

Violation Final Penalty Total \$154

This violation Final Assessed Penalty (adjusted for limits) \$154

Economic Benefit Worksheet

Respondent Joshua G. Duke
Case ID No. 46718
Reg. Ent. Reference No. RN105764138
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)	\$200	30-Jan-2013	27-Mar-2014	1.15	\$12	n/a	\$12

Notes for DELAYED costs

Estimated cost to ensure that all contracts and invoices contain all required information. The Date Required is the record review date and the Final Date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$12

Screening Date 25-Apr-2013
Respondent Joshua G. Duke

Docket No. 2013-0808-LII-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Case ID No. 46718
Reg. Ent. Reference No. RN105764138

Media [Statute] Irrigators
Enf. Coordinator Amancio R. Gutierrez

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 344.50(a)

Violation Description

Failed to install a backflow prevention device. Specifically, the Respondent did not install a backflow prevention device on the irrigation system installed at 537 Mill Creek Road, Longview, Texas.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to a significant amount of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 1

204 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$750

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 \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$282

Violation Final Penalty Total \$927

This violation Final Assessed Penalty (adjusted for limits) \$927

Economic Benefit Worksheet

Respondent Joshua G. Duke
Case ID No. 46718
Reg. Ent. Reference No. RN105764138
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)	\$300	30-Jan-2013	27-Mar-2014	1.15	\$17	n/a	\$17

Notes for DELAYED costs

Estimated cost to implement procedures to ensure backflow prevention devices are properly installed on irrigation systems. The Date Required is the record review date and the Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$250	10-Jul-2012	17-Oct-2012	1.19	\$15	\$250	\$265

Notes for AVOIDED costs

Estimated avoided cost to install a backflow prevention device. The Date Required is the date the irrigation system was installed and the Final Date is the date the backflow prevention device was installed by a third party.

Approx. Cost of Compliance

\$550

TOTAL

\$282

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN603506015, RN105764138, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603506015, Duke, Joshua G

Classification: NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN105764138, Duke, Joshua G

Classification: NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A

Repeat Violator: N/A

CH Group: 14 - Other

Location: 807 NORTHWEST DRIVE, LONGVIEW, GREGG COUNTY, TEXAS

TCEQ Region: REGION 05 - TYLER

ID Number(s):

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: August 27, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 27, 2008 to August 27, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Amancio R. Gutierrez

Phone: (512) 239-3921

Site and Owner/Operator History:

- 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 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
JOSHUA G. DUKE;
RN105764138**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-0808-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 Joshua G. Duke ("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 807 Northwest Drive in Longview, Gregg County, Texas (the "Facility"). 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. On the dates the violations occurred, Respondent held TCEQ irrigator license no. LI0017860 (exp. July 31, 2012). Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903.
2. During an investigation conducted on August 3, 2012, a TCEQ Central Office Irrigation Program investigator documented that Respondent:
 - a. Failed to display the irrigator license number on all vehicles used in the performance of irrigation installation, maintenance, alteration, repair, or service. Specifically, Respondent did not display his irrigator license number on all vehicles during the installation of an irrigation system at 537 Mill Creek Road in Longview, Gregg County, Texas (the "Site");
 - b. 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 statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-128, P.O. Box 13087, Austin, Texas 78711-3087. The TCEQ's website is www.tceq.state.tx.us." Specifically, invoices issued by Respondent for work performed at the Site did not include the irrigator's name, license number, and the required TCEQ statement; and
 - c. Failed to install a backflow prevention device. Specifically, Respondent did not install a backflow prevention device on the irrigation system installed at the Site on July 10, 2012.
3. Respondent received notice of the violations on or about February 4, 2013.
4. The Executive Director recognizes that Respondent is no longer a licensed irrigator as of August 1, 2012.

5. 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 Joshua G. Duke" (the "EDPRP") in the TCEQ Chief Clerk's office on March 19, 2014.
6. By letter dated March 19, 2014, 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. According to the return receipt "green card," Respondent received notice of the EDPRP on March 22, 2014, as evidenced by the signature on the card.
7. 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 TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to display the irrigator license number on all vehicles used in the performance of irrigation installation, maintenance, alteration, repair, or service, in violation of 30 TEX. ADMIN. CODE § 344.70(a).
3. As evidenced by Finding of Fact No. 2.b., 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, license number, and the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-128, P.O. Box 13087, Austin, Texas 78711-3087. The TCEQ's website is www.tceq.state.tx.us", in violation of 30 TEX. ADMIN. CODE § 344.71(b).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to install a backflow prevention device, in violation of 30 TEX. ADMIN. CODE § 344.50(a).
5. As evidenced by Findings of Fact Nos. 5 and 6, 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 (b)(1).
6. As evidenced by Finding of Fact No. 7, 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 TCEQ'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 dollars (\$1,390.00) 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 dollars (\$1,390.00) 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: Joshua G. Duke; Docket No. 2013-0808-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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF J. AMBER AHMED

STATE OF TEXAS

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COUNTY OF TRAVIS

"My name is J. Amber Ahmed. 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 Joshua G. Duke" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on March 19, 2014.

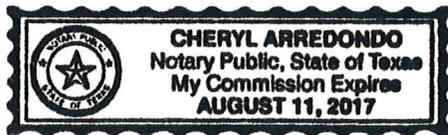
The EDPRP was mailed to Respondent's last known address on March 19, 2014, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on March 22, 2014, as evidenced by the signature on the card.

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

J. Amber Ahmed, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared J. Amber Ahmed, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 21st day of July, A.D. 2014.



Notary without Bond

Cheryl Arredondo
Notary Signature