

James E. Moore, Jr.
RN106315658
Docket No. 2015-0189-LII-E

Order Type:

Default Order

Media:

LII

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

304 Northington Street, Lampasas, Lampasas County
 10763 Country Road 2901 near Evant, Lampasas County

Type of Operation:

licensed landscape irrigator

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	Respondent's Irrigator License No. LI0019862 expires January 31, 2018
Interested Third-Parties:	None

Texas Register Publication Date: September 25, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$2,221

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$2,221

Compliance History Classifications:

Person/CN – N/A
 Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

James E. Moore, Jr.
RN106315658
Docket No. 2015-0189-LII-E

Investigation Information

Complaint Date(s): May 13, 2014
Complaint Information: Alleged that an irrigation system was improperly installed.
Date(s) of Investigation: December 18, 2014
Date(s) of NOV(s): October 17, 2014
Date(s) of NOE(s): January 21, 2015

Violation Information

1. Failed to install an appropriate backflow prevention device for an irrigation system [30 TEX. ADMIN. CODE §§ 344.35(d)(4), 344.50(b), and 344.51(d)(2)].
2. Failed to comply with minimum design and installation requirements [30 TEX. ADMIN. CODE § 344.62(b)(2), (g), (l)(1), and (m)(4)].
3. Failed to provide the TCEQ with requested records within 10 business days of the request [30 TEX. ADMIN. CODE § 344.38].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days:
 - a. Implement measures and/or procedures to ensure that an appropriate backflow prevention device is used in future irrigation system installations;
 - b. Implement measures and/or procedures to ensure all future irrigation system installations comply with the minimum design and installation requirements, including sprinkler head spacing, depth coverage of piping, and wiring requirements, as well as ensuring the irrigation system does not spray over impervious surfaces; and
 - c. Implement measures and/or procedures to ensure irrigation system records are maintained in a manner in which they can be provided to the TCEQ within 10 business days of the request for the records.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: July 17, 2015
Date Green Card(s) Signed: July 20, 2015
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Colleen Lenahan, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Rachel Bekowies, Enforcement Division, (512) 239-2608
TCEQ Regional Contact: David Mann, Waco Regional Office, (254) 751-0335
Respondent Contact: James E. Moore, Jr., 304 Northington Street, Lampasas, Texas 76550
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	26-Jan-2015		
	PCW	16-Jul-2015	Screening	2-Feb-2015
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	James E. Moore, Jr.
Reg. Ent. Ref. No.	RN106315658
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	50031	No. of Violations	3
Docket No.	2015-0189-LII-E	Order Type	1660
Media Program(s)	Irrigators	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rachel Bekowies
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,600
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$80
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Notes: Enhancement for one NOV with same/similar violations.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$627
 Estimated Cost of Compliance: \$2,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,680
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OTHER FACTORS AS JUSTICE MAY REQUIRE	32.2%	Adjustment	\$541
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance associated with Violation Nos. 1 and 2.

Final Penalty Amount	\$2,221
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,221
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$2,221
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Screening Date 2-Feb-2015

Docket No. 2015-0189-LII-E

PCW

Respondent James E. Moore, Jr.

Policy Revision 4 (April 2014)

Case ID No. 50031

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106315658

Media [Statute] Irrigators

Enf. Coordinator Rachel Bekowies

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>)	1	5%
	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 judgments 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) 5%

>> **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

Enhancement for one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 5%

Screening Date 2-Feb-2015
Respondent James E. Moore, Jr.
Case ID No. 50031
Reg. Ent. Reference No. RN106315658
Media [Statute] Irrigators
Enf. Coordinator Rachel Bekowies

Docket No. 2015-0189-LII-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number

Rule Cite(s)

30 Tex. Admin. Code §§ 344.35(d)(4), 344.50(b), and 344.51(d)(2)

Violation Description

Failed to install an appropriate backflow prevention device for the irrigation system. Specifically, the Respondent installed an irrigation system at 10763 Country Road 2901, near Evant, Texas that is served by an on-site sewage facility, but a reduced pressure principle backflow prevention assembly was not used.

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" value="x"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

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

One single event is recommended.

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/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

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 James E. Moore, Jr.
Case ID No. 50031
Reg. Ent. Reference No. RN106315658
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)	\$500	1-Apr-2014	1-Aug-2015	1.33	\$33	n/a	\$33

Notes for DELAYED costs
 Estimated cost to implement measures and/or procedures to ensure the appropriate backflow prevention device is used in future irrigation system installations. The Date Required is the date the irrigation system was installed. The Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Apr-2014	18-Dec-2014	1.63	\$8	\$100	\$108
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs
 Estimated cost to install the appropriate backflow prevention device. The Date Required is the date the irrigation system was installed. The Final Date is the date of the record review.

Approx. Cost of Compliance \$600

TOTAL \$141

Screening Date 2-Feb-2015 **Docket No.** 2015-0189-LII-E **PCW**
Respondent James E. Moore, Jr. *Policy Revision 4 (April 2014)*
Case ID No. 50031 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN106315658
Media [Statute] Irrigators
Enf. Coordinator Rachel Bekowies

Violation Number

Rule Cite(s)

Violation Description Failed to comply with the minimum design and installation requirements. Specifically, the irrigation system installed at the Site did not comply with the minimum design and installation requirements because sprinkler heads were installed closer than four inches from a hardscape; piping was installed without a minimum depth coverage of six inches; underground electrical wiring was not buried with a minimum of six inches of select backfill; and the irrigation system was installed in a manner that allowed the system to spray over impervious materials, such as a fence.

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"/>	<input type="text" value="3.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

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

Four single events are recommended, one for each design or installation requirement that was not met.

Good Faith Efforts to Comply Reduction

	Before NOE/NOV	NOE/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 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 James E. Moore, Jr.
Case ID No. 50031
Reg. Ent. Reference No. RN106315658
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
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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)	\$500	1-Apr-2014	1-Aug-2015	1.33	\$33	n/a	\$33

Notes for DELAYED costs

Estimated cost to implement measures and/or procedures to ensure all future irrigation system installations comply with the minimum design and installation requirements, including sprinkler head spacing, depth coverage of piping, and wiring requirements, as well as ensuring the irrigation system does not spray over impervious surfaces. The Date Required is the date the irrigation system was installed. The Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$400	1-Apr-2014	18-Dec-2014	1.63	\$33	\$400	\$433
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to comply with the minimum design and installation requirements for irrigation systems. The Date Required is the date the irrigation system was installed. The Final Date is the date of the record review.

Approx. Cost of Compliance \$900

TOTAL \$466

Screening Date 2-Feb-2015

Docket No. 2015-0189-LII-E

PCW

Respondent James E. Moore, Jr.

Policy Revision 4 (April 2014)

Case ID No. 50031

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106315658

Media [Statute] Irrigators

Enf. Coordinator Rachel Bekowies

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 344.38

Violation Description

Failed to provide the TCEQ with the requested records within 10 business days of the request. Specifically, a copy of the plan for the irrigation system installed at the Site was requested by the TCEQ on October 14, 2014, but was never provided.

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

111 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 NOE/NOV NOE/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 \$20

Violation Final Penalty Total \$347

This violation Final Assessed Penalty (adjusted for limits) \$347

Economic Benefit Worksheet

Respondent James E. Moore, Jr.
Case ID No. 50031
Reg. Ent. Reference No. RN106315658
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
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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	\$500	14-Oct-2014	1-Aug-2015	0.80	\$20	n/a	\$20
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: Estimated cost to implement measures and/or procedures to ensure irrigation system records are maintained in a manner in which they can be provided to the TCEQ within 10 business days of the request for the records. The Date Required is the date the records were requested. The Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$20

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 CN604019190, RN106315658, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604019190, James E. Moore, Jr.

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

Regulated Entity: RN106315658, MOORE, JAMES E JR

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

Complexity Points: N/A

Repeat Violator: N/A

CH Group: 14 - Other

Location: 304 NORTHINGTON STREET LAMPASAS, TEXAS LAMPASAS COUNTY, 76550

TCEQ Region: REGION 09 - WACO

ID Number(s): LANDSCAPE IRRIGATION LICENSING LICENSE LI0019862

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: January 28, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 28, 2010 to January 28, 2015

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

Name: Rachel Bekowies

Phone: (512) 239-2608

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.

1 Date: 10/17/2014 (1099515)

- | | | | |
|--------------|--|-----------------|----------|
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 344, SubChapter F 344.62(I) | | |
| Description: | Failure to install irrigation system piping at correct depth. Piping in all irrigation systems must be installed according to the manufacturer's published specifications or at a minimum depth coverage of six inches of select backfill. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 344, SubChapter G 344.72(a) | | |
| Description: | Failure to adhere to terms of the warranty provided to the irrigation system's owner or owner representative. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 344, SubChapter F 344.63(2) | | |
| Description: | Failure to provide a maintenance checklist to the systems owner or owner's representative. | | |

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
JAMES E. MOORE, JR.;
RN106315658**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-0189-LII-E

On _____, 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 James E. Moore, Jr. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a landscape irrigation business located at 304 Northington Street in Lampasas, Lampasas County, Texas (the "Business"). Respondent holds TCEQ irrigator license no. LI0019862 and sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services 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 December 18, 2014, an investigator documented that Respondent:
 - a. Failed to install an appropriate backflow prevention device for an irrigation system. Specifically, Respondent installed an irrigation system that is served by an on-site sewage facility at 10763 Country Road 2901 near Evant, Texas (the "Site"), but a reduced pressure principle backflow prevention assembly was not used;
 - b. Failed to comply with minimum design and installation requirements. Specifically, the irrigation system installed at the Site did not comply with minimum design and installation requirements because sprinkler heads were installed closer than four inches from a hardscape, piping was installed without a minimum depth coverage of six inches, underground electrical wiring was not buried with a minimum of six inches of select backfill, and the irrigation system was installed in a manner that allowed the system to spray over impervious materials, such as a fence; and
 - c. Failed to provide the TCEQ with requested records within 10 business days of the request. Specifically, a copy of the plan for the irrigation system installed at the Site was requested by the TCEQ on October 14, 2014, but was never provided.
3. 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 James E. Moore, Jr." (the "EDPRP") in the TCEQ Chief Clerk's office on July 17, 2015.

4. By letter dated July 17, 2015, 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 July 20, 2015, as evidenced by the signature on the card.
5. 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 install an appropriate backflow prevention device for an irrigation system, in violation of 30 TEX. ADMIN. CODE §§ 344.35(d)(4), 344.50(b), and 344.51(d)(2).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to comply with minimum design and installation requirements, in violation of 30 TEX. ADMIN. CODE § 344.62(b)(2), (g), (l)(1), and (m)(4).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to provide the TCEQ with requested records within 10 business days of the request, in violation of 30 TEX. ADMIN. CODE § 344.38.
5. As evidenced by Findings of Fact Nos. 3 and 4, 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. 5, 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 two thousand two hundred twenty-one dollars (\$2,221.00) 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 two thousand two hundred twenty-one dollars (\$2,221.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.

2. The 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 TCEQ and shall be sent with the notation "Re: James E. Moore, Jr.; Docket No. 2015-0189-LII-E" to:

Financial Administration Division, Revenue Operations 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. Within 30 days after the effective date of this Order:
- i. Implement measures and/or procedures to ensure that an appropriate backflow prevention device is used in future irrigation system installations, in accordance with 30 TEX. ADMIN. CODE §§ 344.35, 344.50, and 344.51;
 - ii. Implement measures and/or procedures to ensure all future irrigation system installations comply with the minimum design and installation requirements, including sprinkler head spacing, depth coverage or piping, and wiring requirements, as well as ensuring the irrigation system does not spray over impervious surfaces, in accordance with 30 TEX. ADMIN. CODE § 344.62; and
 - iii. Implement measures and/or procedures to ensure irrigation system records are maintained in a manner in which they can be provided to the TCEQ within 10 business days of the request for the records, in accordance with 30 TEX. ADMIN. CODE § 344.38.
- b. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a.i. through 3.a.iii. The certifications shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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."

The written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

FOSD Water Program, Team Leader
Landscape Irrigation Program, MC 174
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
6. 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. 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.
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 fully executed 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 COLLEEN LENAHAN

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

"My name is Colleen Lenahan. 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 James E. Moore, Jr." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 17, 2015.

The EDPRP was mailed to Respondent's last known address on July 17, 2015, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on July 20, 2015, 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."

Colleen Lenahan

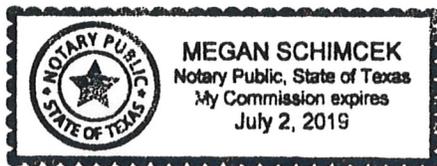
Colleen Lenahan, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Colleen Lenahan, 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.

Subscribed and sworn to before me on this 9th day of September, A.D. 2015.

Megan Schimcek

Notary Public, State of Texas



Notary Without Bond