

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 15, 2009

CHIEF CLERKS OFFICE

2009 JUL 15 PM 4:12

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-09-1144; TCEQ Docket No. 2007-1566-LII-E; Executive
Director of Texas Commission on Environmental Quality vs. Paul Vinson

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than August 4, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than August 14, 2009.

This matter has been designated **TCEQ Docket No. 2007-1566-LII-E; SOAH Docket No. 582-09-1144**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and seven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,


Howard S. Seitzman
Administrative Law Judge

HSS/pp
Enclosures
cc: Mailing List

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TCEQ EXECUTIVE DIRECTOR

PAUL VINSON
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PAUL VINSON

xc: Docket Clerk, State Office of Administrative Hearings

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: PAUL VINSON

SOAH DOCKET NUMBER: 582-09-1144

REFERRING AGENCY CASE: 2007-1566-LII-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ KERRIE QUALTROUGH**

REPRESENTATIVE / ADDRESS

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SOAH DOCKET NO. 582-09-1144
TCEQ DOCKET NO. 2007-1566-LII-E

2009 JUL 15 PM 4:12

CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner

V.

PAUL VINSON,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

In this enforcement action, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) asserts that Paul Vinson (Respondent) failed to include certain required information in an agreement to install an irrigation system. The ED seeks assessment of an administrative penalty totaling \$200.00.¹ No corrective action is sought. The Administrative Law Judge (ALJ) recommends the Commission find that Respondent committed the violation alleged and assess an administrative penalty totaling \$200.00 and require no corrective action.

II. BACKGROUND AND PROCEDURAL HISTORY

Respondent owns and operates a landscape irrigation business located at 15701 Cypress Meadows Drive, Cypress, Harris County, Texas (Business). Respondent sells, designs, consults, installs, maintains, alters, and repairs landscape irrigation systems. Respondent is a licensed Landscape Irrigator. In April 2005, the Commission received a consumer complaint. A series of contacts with the complainant and Respondent ensued. On May 1, 2006, the Commission

¹ The ED initially requested a total penalty of \$262.00 and no corrective action. At the hearing on the merits, the ED reduced the requested penalty amount to \$200.00 with no corrective action. The \$62.00 reduction was based upon a credit for a good faith effort to comply.

conducted a record review investigation. A Notice of Violation was issued on May 30, 2006. On August 24, 2007, a TCEQ investigator conducted a follow-up record review investigation. Based upon the follow-up investigation, a Notice of Enforcement was issued on September 12, 2007.

On June 11, 2008, the ED mailed his Executive Director's Preliminary Report and Petition (EDPRP) to Respondent. The EDPRP recommended an administrative penalty of \$262.00 and no corrective action. The TCEQ received Respondent's answer on August 25, 2008.

The parties waived appearance at the preliminary hearing and an agreed scheduling order was issued by ALJ Kerrie Jo Qualtrough of the State Office of Administrative Hearings (SOAH) on February 6, 2009. On June 11, 2009, ALJ Howard S. Seitzman convened an evidentiary hearing in Austin. The ED was represented by Rudy Calderon. Respondent appeared *pro se*. The record closed on June 11, 2009, following the adjournment of the hearing on the merits.

III. JURISDICTION

The parties did not dispute TCEQ's jurisdiction, SOAH's jurisdiction, or the adequacy of notice. The TCEQ and SOAH have jurisdiction over this matter and notice was proper as reflected by the Findings of Fact and Conclusions of Law in the attached Order.

IV. ALLEGED VIOLATIONS

The ED alleged that Respondent failed to include certain information in a 2005 contract to install an irrigation system. The omitted information was required by now repealed

Commission rule 30 TEX. ADMIN CODE § 344.94(a).² The information omitted included: (1) the date the agreement was signed by Respondent; (2) the Commission's mailing address and telephone number; and (3) the design number for the system.

V. DISCUSSION AND ALJ'S ANALYSIS

A. Discussion

This dispute arises from a consumer complaint received by the Commission in April 2005. Respondent acknowledges that the April 2005 contract omitted certain information required by 30 TEX. ADMIN CODE § 344.94(a). The parties stipulated that the \$200.00 administrative penalty was properly calculated. Respondent stated it was his belief the matter had been resolved in August 2006 when he provided the Commission an updated version of his contract form that contained the required information.

B. ALJ's Analysis

The ALJ understands that Respondent believed his action correcting his contract form resolved the dispute with the Commission. However, correcting the contract form only removed the necessity of requiring corrective action. After correction of the contract form, the Commission still had the option of seeking enforcement of an administrative penalty for the omission of the required information from the 2005 contract. For that omission the ED seeks a \$200.00 administrative penalty. Respondent does not dispute: (1) the information was omitted; (2) the omitted information was required; and (3) the penalty amount is correct.

² 20 Tex. Reg. 10555 (1995), adopted 21 Tex. Reg. 5444 (1996), repealed by proposed 33 Tex. Reg. 899 (2008), adopted 33 Tex. Reg. 5713 (2008) (former 30 TEX. ADMIN. CODE §§ 344.90-.96) (Tex. Comm'n Environmental Quality) (hereinafter referred to as 30 TEX. ADMIN CODE § 344.94(a)).

VI. CONCLUSION

The ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law set forth in the attached Order assessing an administrative penalty of \$200.00 against Respondent for having violated 30 TEX. ADMIN CODE § 344.94(a).

SIGNED July 15, 2009.



**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**ORDER ASSESSING ADMINISTRATIVE
PENALTIES AGAINST PAUL VINSON.
SOAH DOCKET NO. 582-09-1144
TCEQ DOCKET NO. 2007-1566-LII-E**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against Paul Vinson (Respondent). A Proposal for Decision (PFD) was presented by Howard S. Seitzman, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing in this case on June 11, 2009, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent owns and operates a landscape irrigation business located at 15701 Cypress Meadows Drive, Cypress, Harris County, Texas (Business). Respondent sells, designs,

consults, installs, maintains, alters, and repairs landscape irrigation systems. Respondent is a licensed Landscape Irrigator.

2. A consumer complaint regarding Respondent was received by the Commission in April 2005.
3. Following a series of contacts with the complainant and Respondent, on May 1, 2006, the Commission conducted a record review investigation.
4. A Notice of Violation was issued on May 30, 2006.
5. On August 24, 2007, a TCEQ investigator conducted a follow-up record review investigation.
6. Based upon the follow-up investigation, a Notice of Enforcement was issued on September 12, 2007.
7. The Executive Director (ED) alleged (1) Respondent failed to specify certain information in an April 2005 contract to install an irrigation system; and (2) the omitted information was required by now repealed Commission rule 30 TEX. ADMIN CODE (TAC) § 344.94(a). (20 Tex. Reg. 10555 (1995), adopted 21 Tex. Reg. 5444 (1996), repealed by proposed 33 Tex. Reg. 899 (2008), adopted 33 Tex. Reg. 5713 (2008) (former 30 TEX. ADMIN. CODE §§ 344.90-.96) (Tex. Comm'n Environmental Quality) (hereinafter 30 TAC § 344.94(a)).
8. The ED alleged Respondent omitted the following required information: (1) the date the agreement was signed by Respondent; (2) the Commission's mailing address and telephone number; and (3) the design number for the system.
9. On June 11, 2008, the ED mailed his EDPRP to Respondent. The EDPRP recommended an administrative penalty of \$262.00 and no corrective action.
10. The TCEQ received Respondent's answer on August 25, 2008.

11. The parties waived appearance at the preliminary hearing and an agreed scheduling order was issued by SOAH ALJ Kerrie Jo Qualtrough on February 6, 2009.
12. On June 11, 2009, ALJ Howard S. Seitzman convened an evidentiary hearing in Austin. The ED was represented by Rudy Calderon. Respondent appeared *pro se*. The record closed on June 11, 2009, following the adjournment of the hearing on the merits.
13. At the hearing on the merits, the ED reduced the penalty sought to \$200.00 based upon a reduction for a good faith effort to comply.
14. Respondent acknowledged the April 2005 contract omitted certain information required by 30 TAC § 344.94(a), as alleged by the ED.
15. The parties stipulated that the \$200.00 administrative penalty was properly calculated.
16. Respondent contended it was his understanding the matter had been resolved in August 2006 when he provided the Commission an updated version of his contract form that contained the required information.

CONCLUSIONS OF LAW

1. Paul Vinson, a licensed Landscape Irrigator, is subject to Commission jurisdiction pursuant to TEX. OCC. CODE ANN. § 1903.001 *et seq.*; TEX. WATER CODE ANN. § 37.001 *et seq.*; and 30 TAC chs. 30 and 344.
2. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a statute, rule or permit within the Commission's jurisdiction.

3. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$2,500 per violation per day for each violation at issue in this case.
4. As required by TEX. WATER CODE ANN. §7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the violations alleged and the penalties proposed therein.
5. As required by TEX. GOV'T CODE ANN. § 2001.052; TEX. WATER CODE ANN. § 7.058; and the procedural rules of SOAH and the Commission, Paul Vinson was notified of the hearing.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
7. Respondent violated 30 TAC § 344.94(a), a rule within the Commission's jurisdiction.
8. By correcting the contract form to comply with 30 TAC § 344.94(a), Respondent removed the necessity of requiring corrective action. After correction of the contract form, the Commission still had the option of seeking an administrative penalty for the violation of 30 TAC § 344.94(a).
9. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:
 - Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;

- The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
 11. Based on the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, a total administrative penalty of \$200.00 is justified and should be assessed against Paul Vinson. No corrective action is required.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Within 30 days after the effective date of this Order, Paul Vinson shall pay an administrative penalty in the amount of \$200.00 for the violation of 30 TEX. ADMIN CODE § 344.94(a), with the notation "PAUL VINSON, TCEQ DOCKET NO. 2007-1566-LII-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088.

2. The payment of the administrative penalty will completely resolve the violation set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
3. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Paul Vinson if the ED determines that Paul Vinson has not complied with one or more of the terms or conditions in this Order.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
6. The Commission's Chief Clerk shall forward a copy of this Order to Paul Vinson.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**BUDDY GARCIA, CHAIRMAN
FOR THE COMMISSION**