

Robert A. Garner
RN106244882
Docket No. 2013-1530-LII-E

Order Type:

Default Order

Media:

LII

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2907 Lindsey Drive, Copperas Cove, Coryell County;

905 Kim Avenue, Copperas Cove, Coryell County

Type of Operation:

landscaping business

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: Respondent's Landscape Irrigator License No. LI0019676 expires October 31, 2014, and cannot be renewed until the penalty assessed by this order has been paid in full.

Interested Third-Parties: None

Texas Register Publication Date: August 15, 2014**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$3,416**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$3,416**Compliance History Classifications:**

Person/CN –Unclassified

Site/RN – Not Applicable

Major Source: No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** September 2011**Investigation Information****Complaint Date(s):** July 30, 2012; January 24, 2013

Complaint Information: Alleged that Respondent installed an irrigation system that was not up to code; alleged that Respondent did not have an irrigation system inspected before the permit expired.

Date(s) of Investigation: July 12, 2012; February 19, 2013**Date(s) of NOV(s):** December 19, 2012**Date(s) of NOE(s):** February 28, 2013

Robert A. Garner
RN106244882
Docket No. 2013-1530-LII-E

Violation Information

1. Failed to comply with reasonable inspection requirements [30 TEX. ADMIN. CODE § 344.24(a)].
2. Failed to comply with minimum design and installation requirements [30 TEX. ADMIN. CODE § 344.62(b)(2)].
3. Failed to provide an irrigation system plan to the owner of the system indicating the actual installation of the system [30 TEX. ADMIN. CODE § 344.63(4)].
4. Failed to honor the written warranty provided to the owner of the irrigation system [30 TEX. ADMIN. CODE § 344.72(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days:
 - a. Implement procedures to ensure that final inspections are conducted;
 - b. Implement procedures to ensure compliance with minimum design and installation requirements;
 - c. Implement procedures to ensure that irrigation system plans are provided to the owners of irrigation systems; and
 - d. Implement measures to ensure that written warranty obligations are kept.
2. Within 45 days submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: February 18, 2014; March 26, 2014

Date Green Card(s) Signed: Unclaimed; Unclaimed

Date Answer(s) Filed: N/A

Contact Information

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

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

TCEQ Regional Contact: David Mann, Waco Regional Office, (512) 751-0335

Respondent Contact: Robert A. Garner, 2907 Lindsey Drive, Copperas Cove, Texas 76522

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	30-Jul-2013		
	PCW	1-May-2014	Screening	8-Aug-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Robert A. Garner
Reg. Ent. Ref. No.	RN106244882
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	47406	No. of Violations	4
Docket No.	2013-1530-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	\$1,500
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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	\$75

Notes	Enhancement for one NOV with same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$1,916	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,550	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,575
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OTHER FACTORS AS JUSTICE MAY REQUIRE	116.9%	Adjustment	\$1,841
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance for Violation Nos. 1 through 4.
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Final Penalty Amount	\$3,416
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,416
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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.
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PAYABLE PENALTY	\$3,416
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Screening Date 8-Aug-2013

Docket No. 2013-1530-LII-E

PCW

Respondent Robert A. Garner

Policy Revision 3 (September 2011)

Case ID No. 47406

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106244882

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>)	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 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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 8-Aug-2013 **Docket No.** 2013-1530-LII-E **PCW**
Respondent Robert A. Garner *Policy Revision 3 (September 2011)*
Case ID No. 47406 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN106244882
Media [Statute] Irrigators
Enf. Coordinator Amancio R. Gutierrez

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 344.24(a)

Violation Description

Failed to comply with reasonable inspection requirements. Specifically, the Respondent failed to schedule a final inspection with the City of Copperas Cove for the irrigation system installed at 905 Kim Avenue, Copperas Cove, Texas.

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 A. Garner
Case ID No. 47406
Reg. Ent. Reference No. RN106244882
Media Violation No. Irrigators
 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	21-Jul-2012	21-Apr-2014	1.75	\$9	n/a	\$9

Notes for DELAYED costs

Estimated cost to implement procedures to ensure final inspections are conducted. The Date Required is the date the irrigation system was installed and 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	21-Jul-2012	31-Mar-2013	1.61	\$8	\$100	\$108
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to schedule a final inspection. The Date Required is the date the irrigation system was installed and the Final Date is the date the irrigation system was replaced.

Approx. Cost of Compliance \$200

TOTAL \$117

Screening Date 8-Aug-2013

Docket No. 2013-1530-LII-E

PCW

Respondent Robert A. Garner

Policy Revision 3 (September 2011)

Case ID No. 47406

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106244882

Media [Statute] Irrigators

Enf. Coordinator Amancio R. Gutierrez

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 344.62(b)(2)

Violation Description

Failed to comply with minimum design and installation requirements. Specifically, the Respondent installed pop-up spray heads closer than four inches from hardscapes for the irrigation system installed at 905 Kim Avenue, Copperas Cove, 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 pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 1

253 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	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 \$584

Violation Final Penalty Total \$1,708

This violation Final Assessed Penalty (adjusted for limits) \$1,708

Economic Benefit Worksheet

Respondent Robert A. Garner
Case ID No. 47406
Reg. Ent. Reference No. RN106244882
Media Violation No. Irrigators
 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	21-Jul-2012	21-Apr-2014	1.75	\$44	n/a	\$44

Notes for DELAYED costs Estimated cost to implement procedures to ensure compliance with minimum design and installation requirements. The Date Required is the date the irrigation system was installed and 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]	\$500	21-Jul-2012	31-Mar-2013	1.61	\$40	\$500	\$540
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs Estimated avoided cost to comply with minimum design and installation requirements. The Date Required is the date the irrigation system was installed and the Final Date is the date the irrigation system was replaced.

Approx. Cost of Compliance \$1,000

TOTAL \$584

Screening Date 8-Aug-2013

Docket No. 2013-1530-LII-E

PCW

Respondent Robert A. Garner

Policy Revision 3 (September 2011)

Case ID No. 47406

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106244882

Media [Statute] Irrigators

Enf. Coordinator Amancio R. Gutierrez

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 344.63(4)

Violation Description

Failed to provide an irrigation system plan indicating the actual installation of the system to the owner of the system installed at 905 Kim Avenue, Copperas Cove, 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 1

253 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 \$117

Violation Final Penalty Total \$569

This violation Final Assessed Penalty (adjusted for limits) \$569

Economic Benefit Worksheet

Respondent Robert A. Garner
Case ID No. 47406
Reg. Ent. Reference No. RN106244882
Media Violation No. Irrigators
 3

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0	
Buildings			0.00	\$0	\$0	\$0	
Other (as needed)			0.00	\$0	\$0	\$0	
Engineering/construction			0.00	\$0	\$0	\$0	
Land			0.00	\$0	n/a	\$0	
Record Keeping System			0.00	\$0	n/a	\$0	
Training/Sampling			0.00	\$0	n/a	\$0	
Remediation/Disposal			0.00	\$0	n/a	\$0	
Permit Costs			0.00	\$0	n/a	\$0	
Other (as needed)	\$100	21-Jul-2012	21-Apr-2014	1.75	\$9	n/a	\$9

Notes for DELAYED costs
 Estimated cost to implement procedures to ensure that irrigation system plans are provided to the owners of irrigation systems. The Date Required is the date the irrigation system was installed and 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	21-Jul-2012	31-Mar-2013	1.61	\$8	\$100	\$108
Other (as needed)			0.00	\$0	\$0	\$0	

Notes for AVOIDED costs
 Estimated avoided cost to provide the irrigation plan to the owner of the system. The Date Required is the date the irrigation system was installed and the Final Date is the date the irrigation system was replaced.

Approx. Cost of Compliance \$200

TOTAL \$117

Screening Date 8-Aug-2013

Docket No. 2013-1530-LII-E

PCW

Respondent Robert A. Garner

Policy Revision 3 (September 2011)

Case ID No. 47406

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106244882

Media [Statute] Irrigators

Enf. Coordinator Amancio R. Gutierrez

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 344.72(a)

Violation Description

Failed to honor the written warranty provided to the owner of the irrigation system installed at 905 Kim Avenue, Copperas Cove, 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 1

253 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

	Reduction	
	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 \$1,099

Violation Final Penalty Total \$569

This violation Final Assessed Penalty (adjusted for limits) \$569

Economic Benefit Worksheet

Respondent Robert A. Garner
Case ID No. 47406
Reg. Ent. Reference No. RN106244882
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)	\$150	20-Jun-2012	21-Apr-2014	1.84	\$14	n/a	\$14

Notes for DELAYED costs Estimated cost to implement measures to ensure that written warranty obligations are kept. The Date Required is the date that the warranty was issued and 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)	\$1,000	20-Jun-2012	31-Mar-2013	1.70	\$85	\$1,000	\$1,085

Notes for AVOIDED costs Estimated avoided cost for not fulfilling obligations of the one year warranty. The Date Required is the date that the warranty was issued and the Final Date is the date the system was replaced.

Approx. Cost of Compliance \$1,150

TOTAL \$1,099



Compliance History Report

PENDING Compliance History Report for CN603969411, RN106244882, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator:	CN603969411, Robert A. Garner	Classification: UNCLASSIFIED	Rating: -----
Regulated Entity:	RN106244882, GARNER, ROBERT A	Classification: NOT APPLICABLE	Rating: N/A
Complexity Points:	N/A	Repeat Violator:	N/A
CH Group:	14 - Other		
Location:	2907 LINDSEY DRIVE, COPPERAS COVE, TX, CORYELL COUNTY		
TCEQ Region:	REGION 09 - WACO		
ID Number(s):	LANDSCAPE IRRIGATION LICENSING LICENSE LI0019676		

Compliance History Period:	September 01, 2008 to August 31, 2013	Rating Year:	2013	Rating Date:	09/01/2013
Date Compliance History Report Prepared:	October 23, 2013				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	October 23, 2008 to October 23, 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.

1 Date: 12/19/2012 (1028781)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 344, SubChapter F 344.62(b)(2)
Description: Failure to meet minimum design requirements for head spacing. Specifically, Mr. Garner installed above-ground spray heads in the parkway adjacent to the sidewalk and the installation of one or more heads was closer than 4" from hardscape.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 344, SubChapter F 344.63(4)
Description: Failure to provide irrigation system owner an as-built plan. Specifically, Mr. Garner failed to provide the irrigation system owner a design or an as-built plan.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 344, SubChapter G 344.72(a)
Description: Failure to honor the written warranty. Specifically, Mr. Garner gave a written one year warranty and to date has not responded to the TCEQ's attempts to communicate regarding the requirement to fulfill given warranty requirements. Mr. Gilfillan attempted to contact the respondent on 08/20/2012, 10/05/2012 and 10/18/2012.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ROBERT A. GARNER;
RN106244882**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-1530-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 Robert A. Garner ("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 2907 Lindsey Drive in Copperas Cove, Coryell County, Texas (the "Business"). Respondent holds TCEQ irrigator license no. LI0019676, and sells, designs, offers consultations regarding, installs, maintains, alters, repairs, and/or services landscape irrigation systems and is required to be licensed under 30 TEX. ADMIN. CODE ch. 30. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. OCC. CODE ch. 1903.
2. During record review conducted on February 19, 2013, a TCEQ Central Office investigator documented that Respondent:
 - a. Failed to comply with reasonable inspection requirements. Specifically, Respondent failed to schedule a final inspection with the City of Copperas Cove for the irrigation system installed at 905 Kim Avenue, Copperas Cove, Coryell County, Texas ("the Residence");
 - b. Failed to comply with minimum design and installation requirements. Specifically, Respondent installed pop-up spray heads closer than four inches from hardscapes for the irrigation system installed at the Residence;
 - c. Failed to provide an irrigation system plan indicating the actual installation of the system to the owner of the system installed at the Residence; and
 - d. Failed to honor the written warranty provided to the owner of the irrigation system installed at the Residence.
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 Robert A. Garner" (the "EDPRP") in the TCEQ Chief Clerk's office on February 18, 2014.
4. The EDPRP was mailed to Respondent's last known address on February 18, 2014, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

5. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on March 26, 2014.
6. By letter dated March 26, 2014, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
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 comply with reasonable inspection requirements, in violation of 30 TEX. ADMIN. CODE § 344.24(a).
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).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to provide an irrigation system plan indicating the actual installation of the system to the owner of the system installed at the Residence, in violation of 30 TEX. ADMIN. CODE § 344.63(4).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to honor the written warranty provided to the owner of the irrigation system installed at the Residence, in violation of 30 TEX. ADMIN. CODE § 344.72(a).
6. As evidenced by Findings of Fact Nos. 3 through 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(c)(2).
7. 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.
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 TCEQ'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 three thousand four hundred sixteen dollars (\$3,416.00) 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 three thousand four hundred sixteen dollars (\$3,416.00) 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 A. Garner; Docket No. 2013-1530-LII-E" to:

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

3. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Respondent shall:
 - i. Implement procedures to ensure that final inspections are conducted;
 - ii. Implement procedures to ensure compliance with minimum design and installation requirements;
 - iii. Implement procedures to ensure that irrigation system plans are provided to the owners of irrigation systems; and
 - iv. Implement measures to ensure that written warranty obligations are kept.
 - b. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a.i. through 3.a.iv. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

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

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RYAN RUTLEDGE

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Ryan Rutledge. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Robert A. Garner" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 18, 2014.

The EDPRP was mailed to Respondent's last known address on February 18, 2014, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on March 26, 2014.

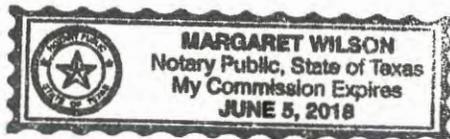
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More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

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

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

Given under my hand and seal of office this 24th day of JULY, A.D. 2014.



Notary without Bond

Notary Signature