

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 14, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 91 7108 2133 3935 1986 3185

The Honorable Dan Gattis, County Judge
Williamson County
710 Main Street
Georgetown, Texas 78626

Re: Notice of Enforcement Action
Williamson County; RN106064751
Edwards Aquifer Protection Plan No. 11-12022301
Docket No. 2012-1045-EAQ-E; Enforcement Case No. 44196
FOR SETTLEMENT PURPOSES ONLY

Dear Judge Gattis:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") is pursuing an enforcement action against Williamson County for violations of the Texas Water Code and/or Commission Rules. These violations were discovered during an investigation conducted on April 19, 2012, and documented in a letter dated May 4, 2012, from the TCEQ Austin Regional Office.

Please find enclosed a proposed agreed order which we have prepared in an attempt to expedite this enforcement action. The order assesses an administrative penalty of Nine Hundred Thirty-Eight Dollars (\$938). We are proposing a one time offer to defer One Hundred Eighty-Seven Dollars (\$187) of the administrative penalty if you satisfactorily comply with all the ordering provisions within the time frames listed. Therefore, the administrative penalty to be paid is Seven Hundred Fifty-One Dollars (\$751). The order also identifies the violations that we are addressing.

If you have any questions regarding this matter, we are available to discuss them in a conference in Austin or over the telephone. If we reach agreement in a timely manner, the TCEQ will then proceed with the remaining procedural steps to settle this matter. These steps include publishing notice of the proposed order in the *Texas Register*, and scheduling the matter for the Commission's agenda. We believe that handling this matter expeditiously could save Williamson County and the TCEQ a significant amount of time, as well as the expense associated with litigation.

Mr. Dan Gattis

Page 2

Enclosed for your convenience is a return envelope. If you agree with the order as proposed, please sign and return the original order **and** the penalty payment (check payable to "TCEQ" and referencing Williamson County, Docket No. 2012-1045-EAQ-E) to:

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

Should you believe you are unable to pay the proposed administrative penalty, you may claim financial inability to pay part or all of the penalty amount. Please contact us immediately to obtain a list of financial disclosure documents that must be submitted within 30 days of the receipt of this letter. These documents, once properly completed and submitted, will be thoroughly reviewed to determine if we agree with the claim of financial inability. Please be aware that if financial inability is proven to the satisfaction of staff, discussions pertaining to the penalty amount adjustment will focus only on deferral and not on waiver of the penalty amount.

You may be able to perform or pay for a Supplemental Environmental Project ("SEP"), which is a project that benefits the environment, to offset a portion of your penalty. **If you are interested in performing a SEP, you must agree to the penalty amount and submit a SEP proposal within 30 days of receipt of this proposed order.** If you are a local government you may have additional SEP options available to assist you with coming into compliance or remediating the harm caused by the violations. A local government is defined as a school district, county, municipality, junior college district, river authority, water district or other special district or other political subdivision created under the constitution or a statute of this state.

For additional information about the types of SEPs available and eligibility criteria, please go to the TCEQ's web site link at <http://www.tceq.state.tx.us/legal/sep/index.html> or contact the Enforcement Coordinator listed below.

Please note that any agreements we reach are subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).

Mr. Dan Gattis
Page 3

If we cannot reach a settlement of this enforcement action or you do not wish to participate in this expedited process, we will proceed with enforcement under the Commission's Enforcement Rules, 30 TEX. ADMIN. CODE ch. 70. Specifically, if the signed order and penalty are not mailed and postmarked within 60 days from the date of this letter, your case will be forwarded to the Litigation Division and this settlement offer, including the penalty deferral, will no longer be available. If you would like to obtain a copy of 30 TEX. ADMIN. CODE ch. 70 or any other TCEQ rules, you may contact any of the sources listed in the enclosed brochure entitled *Obtaining TCEQ Rules*. The enforcement process described in 30 TEX. ADMIN. CODE ch. 70 requires the staff to prepare and issue an Executive Director's Preliminary Report and Petition to the Commission.

For any questions or comments about this matter or to arrange a meeting, please contact Mr. Jeremy Escobar of my staff at (361) 825-3422.

Ms. Gattis
Sincerely,



Susan Johnson, Manager
Enforcement Division
Texas Commission on Environmental Quality

SJ/je

Enclosures: Proposed Agreed Order, Return Envelope, *Obtaining TCEQ Rules*, Penalty Calculation Worksheet, Site Compliance History

cc: Ms. Carolyn Runyon, Manager, Water Section, Austin Regional Office, TCEQ

Mr. Dan Gattis
Page 4

bcc: Mr. Jeremy Escobar, Coordinator, Enforcement Division, MC R14
Central Records, MC 213, Building E, 1st Floor, Williamson/11-12022301/CO
Enforcement Division Reader File

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WILLIAMSON COUNTY
RN106064751

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2012-1045-EAQ-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Williamson County ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a road construction site located approximately 330 feet from Lake Creek Bridge on O'Connor Drive in Williamson County, Texas (the "Site").
2. The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 9, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Hundred Thirty-Eight Dollars (\$938) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Fifty-One Dollars (\$751) of the administrative penalty and One Hundred Eighty-Seven Dollars (\$187) is deferred.

contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent obtained approval of an Edwards Aquifer Protection Plan ("EAPP") Exception Request on May 4, 2012.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain approval of an EAPP Exception Request prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on April 19, 2012. Specifically, the driveways proposed in the EAPP Exception Request submitted February 23, 2012, had been constructed without approval.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations

which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Williamson County, Docket No. 2012-1045-EAQ-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 provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director


Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

12-18-2012

Date

DAN A GATTI

Name (Printed or typed)
Authorized Representative of
Williamson County

County Judge

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	14-May-2012	Screening	21-May-2012	EPA Due	
	PCW	21-May-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	Williamson County		
Reg. Ent. Ref. No.	BN106064751		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	44196	No. of Violations	1
Docket No.	2012-1045-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jeremy Escobar
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
---------------------------	------------------	--------------------------------	-----

Notes: No adjustment for Compliance History.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$312
--	-------------------	-------

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$2		
Approx. Cost of Compliance	\$1,000		

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$938
-----------------------------	-----------------------	-------

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$938
-----------------------------	-------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$938
-----------------------------------	-------------------------------	-------

DEFERRAL	20.0% Reduction	Adjustment	-\$187
-----------------	-----------------	-------------------	--------

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$751
------------------------	-------

Screening Date 21-May-2012

Docket No. 2012-1045-EAQ-E

PCW

Respondent Williamson County

Policy Revision 3 (September 2011)

Case ID No. 44196

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106064751

Media [Statute] Edwards Aquifer

Enf. Coordinator Jeremy Escobar

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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
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)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

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 21-May-2012	Docket No. 2012-1045-EAQ-E	PCW <small>Policy Revision 3 (September 2011) PCW Revision August 3, 2011</small>
Respondent Williamson County		
Case ID No. 44196		
Reg. Ent. Reference No. RN106064751		
Media [Statute] Edwards Aquifer		
Enf. Coordinator Jeremy Escobar		
Violation Number 1		
Rule Cite(s)	30 Tex. Admin. Code § 213.4(a)(1)	
Violation Description	Failed to obtain approval of an Edwards Aquifer Protection Plan ("EAPP") Exception Request prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the driveways proposed in the EAPP Exception Request submitted February 23, 2012, had been constructed without approval.	
Base Penalty		\$25,000

>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				
	Potential				

>> Programmatic Matrix				
Falsification	Major	Moderate	Minor	Percent
	x			
Matrix Notes	100% of the rule requirement was not met.			
Adjustment				\$23,750
				\$1,250

Violation Events				
	Number of Violation Events	1	15	Number of violation days
mark only one with an x	daily			Violation Base Penalty
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
One monthly event is recommended from the April 19, 2012 investigation date to the May 4, 2012 compliance date.				
Good Faith Efforts to Comply				\$312

	25.0% Reduction		
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary			Violation Subtotal
Ordinary	x		
N/A		(mark with x)	
Notes	The Respondent obtained approval of an EAPP on May 4, 2012.		\$938

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$2	Violation Final Penalty Total	\$938
This violation Final Assessed Penalty (adjusted for limits)		\$938	

Economic Benefit Worksheet

Respondent Williamson County
Case ID No. 44196
Reg. Ent. Reference No. RN106064751
Media Edwards Aquifer
Violation No. 1

Percent Interest 5.0
Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No changes on \$							

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	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs	\$1,000	19-Apr-2012	4-May-2012	0.04	\$2	\$0	\$2
Other (as needed)				0.00	\$0	\$0	\$0

Notes for DELAYED costs

The estimated cost to prepare and submit an exception request application to obtain approval, and associated fee. Date Required is the date of the investigation and the Final Date is the 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

\$1,000

TOTAL

\$2

Compliance History Report

Customer/Respondent/Owner-Operator:	CN800887888 Williamson County	Classification: AVERAGE	Rating: 3.05
Regulated Entity:	RN106064751 O CONNOR DRIVE EXTENSION	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	EDWARDS AQUIFER EDWARDS AQUIFER EDWARDS AQUIFER EDWARDS AQUIFER EDWARDS AQUIFER STORMWATER	REGISTRATION REGISTRATION REGISTRATION REGISTRATION REGISTRATION PERMIT	11-12022301 11-11010303 11-11010302 11-12022301 11-11010303 TXR15RP89
Location:	approximately 330 feet from Lake Creek Bridge on O'Connor Drive		
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	June 06, 2012		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 21, 2007 to May 21, 2012		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Jeremy Escobar	Phone:	825-3422

Site Compliance History Components

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, who is the current owner/operator? N/A
4. If YES, 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
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 05/08/2012 (996593)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
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