

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1666-WQ-E **TCEQ ID:** RN105205942 **CASE NO.:** 34764

RESPONDENT NAME: Boyett Construction, L.L.C.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: LaQuinta Bridge City, 108 Texas Avenue, Bridge City, Orange County</p> <p>TYPE OF OPERATION: Hotel construction site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on August 1, 2007, alleging that sediment was being discharged from the construction site. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on February 4, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2576; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Wayne Neil Liepke, Managing Partner, Boyett Construction, L.L.C., 105 Robin Avenue, Bridge City, Texas 77611 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: August 1, 2007</p> <p>Date of Investigation Relating to this Case: August 22, 2007</p> <p>Date of NOE Relating to this Case: October 3, 2007 (NOE)</p> <p>Background Facts: This was a follow-up investigation to a complaint that was received on August 1, 2007.</p> <p>WATER</p> <p>1) Failure to develop a Storm Water Pollution Prevention Plan ("SWP3") according to the provisions of the general permit. Specifically, the SWP3 did not include: a general location map; a description of potential pollutants and sources; a description of the intended schedule/sequence of major soil disturbing activities; soil or discharge quality data; drainage patterns anticipated after major grading activities; major structural control locations; and a description of construction and waste materials expected to be stored on-site and controls to reduce pollutants from these materials [30 TEX. ADMIN. CODE § 281.25(a)(4) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000, Part III, Section F.1(a), (b), (d), (e), (f)(i) and (f)(iii) and F.5(b)].</p> <p>2) Failure to conduct an inspection of the controls at the Site at least once every 14 days and within 24 hours of the end of a storm event of 0.5 inch or greater, or once every 7 days [30 TEX. ADMIN. CODE § 281.25(a)(4) and TPDES General Permit No. TXR150000, Part III, Section F.8(a)].</p> <p>3) Failure to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state. Specifically,</p>	<p>Total Assessed: \$1,680</p> <p>Total Deferred: \$336 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,344</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Immediately upon the effective date of this Agreed Order, begin conducting inspections of the sediment control measures at the Site at least once every 14 days and within 24 hours of the end of a storm event of 0.5 inch or greater, or once every 7 days;</p> <p>b) Within 30 days after the effective date of this Agreed Order, revise the SWP3 to include: a general location map; a description of potential pollutants and sources; a description of the intended schedule/sequence of major soil disturbing activities; soil or discharge quality data; drainage patterns anticipated after major grading activities; major structural control locations; a description of construction and waste materials expected to be stored on-site and controls to reduce pollutants from these materials; and the frequency and a checklist for inspections of structural controls;</p> <p>c) Within 60 days after the effective date of this Agreed Order, ensure that sediment control measures are adequately designed and installed to retain sediment on-site to the extent practicable and remove and properly dispose of sediment that has discharged along the northern and southern boundaries of the Site; and</p> <p>d) Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through c. The certification shall be notarized by a State of Texas Notary Public.</p>

<p>sediment discharged off-site along the northern boundary of the Site where control measures were absent and to a marshy area adjacent to Sabine Lake along the southern boundary of the Site where control measures were in need of repair or replacement [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III, Section F.2(a) and F.7, and TEX. WATER CODE § 26.121(a)].</p>		
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Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

DATES	Assigned	8-Oct-2007	Screening	10-Oct-2007	EPA Due	
	PCW	11-Oct-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Boyett Construction, L.L.C.		
Reg. Ent. Ref. No.	RN105205942		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34764	No. of Violations	3	
Docket No.	2007-1666-WQ-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Thomas Jecha	
Multi-Media		EC's Team	EnforcementTeam 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,600
ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	5% Enhancement	Subtotals 2, 3, & 7 \$80
Notes	Enhancement for one same or similar NOV issued within the past five years.	
Culpability	No	0% Enhancement Subtotal 4 \$0
Notes	The Respondent does not meet the culpability criteria.	
Good Faith Effort to Comply	0% Reduction	Subtotal 5 \$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.	
		0% Enhancement* Subtotal 6 \$0
Total EB Amounts	\$66	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,600	
SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,680
OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment \$0
Reduces or enhances the Final Subtotal by the indicated percentage.		
Notes		
	Final Penalty Amount	\$1,680
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty \$1,680
DEFERRAL	20% Reduction	Adjustment -\$336
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		\$1,344

Screening Date 10-Oct-2007

Docket No. 2007-1666-WQ-E

PCW

Respondent Boyett Construction, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 34764

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105205942

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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) 5%

>> 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

Enhancement for one same or similar NOV issued within the past five years.

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

Screening Date 10-Oct-2007	Docket No. 2007-1666-WQ-E	PCW			
Respondent Boyett Construction, L.L.C.	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 34764	<small>PCW Revision September 19, 2007</small>				
Reg. Ent. Reference No. RN105205942					
Media [Statute] Water Quality					
Enf. Coordinator Thomas Jecha					
Violation Number <input type="text" value="1"/>					
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000, Part III, Section F.1(a), (b), (d), (e), (f)(I) and (f)(iii) and F.5(b).				
Violation Description	Failed to develop a Storm Water Pollution Prevention Plan ("SWP3") according to the provisions of the general permit. Specifically, the SWP3 did not include: a general location map; a description of potential pollutants and sources; a description of the intended schedule/sequence of major soil disturbing activities; soil or discharge quality data; drainage patterns anticipated after major grading activities; major structural control locations; and a description of construction and waste materials expected to be stored on-site and controls to reduce pollutants from these materials.				
Base Penalty		<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm			Percent <input type="text" value="0%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	Percent <input type="text" value="1%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	X	
Matrix Notes	At least 70% of the rule requirement was met.				
Adjustment		<input type="text" value="\$9,900"/>			
<input type="text" value="\$100"/>					
Violation Events					
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="50"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$100"/>		
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	X			
One single event is recommended.					
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$19"/>		Violation Final Penalty Total	<input type="text" value="\$105"/>
This violation Final Assessed Penalty (adjusted for limits)					<input type="text" value="\$105"/>

Economic Benefit Worksheet

Respondent Boyett Construction, L.L.C.
Case ID No. 34764
Reg. Ent. Reference No. RN105205942
Media Water Quality
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
<i>No commas or \$</i>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	22-Aug-2007	30-May-2008	0.8	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost to revise the SWP3 to include missing information. The Required Date is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$19

Screening Date	10-Oct-2007	Docket No.	2007-1666-WQ-E	PCW
Respondent	Boyett Construction, L.L.C.		<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	34764	<i>PCW Revision September 19, 2007</i>		
Reg. Ent. Reference No.	RN105205942			
Media [Statute]	Water Quality			
Enf. Coordinator	Thomas Jecha			

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and TPDES General Permit No. TXR150000, Part III, Section F.8(a).

Violation Description

Failed to conduct an inspection of the controls at the Site at least once every 14 days and within 24 hours of the end of a storm event of 0.5 inch or greater, or once every 7 days.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	x		

>> Programmatic Matrix

	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Human health or the environment could be exposed to insignificant amounts of pollutants 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"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	x

Violation Base Penalty

One single event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$3"/>	Violation Final Penalty Total <input type="text" value="\$525"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$525"/>	

Economic Benefit Worksheet

Respondent: Boyett Construction, L.L.C.
 Case ID No. 34764
 Reg. Ent. Reference No. RN105205942
 Media Water Quality
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	22-Aug-2007	30-Apr-2008	0.7	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to inspect controls at the Site as required. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$3

Screening Date	10-Oct-2007	Docket No.	2007-1666-WQ-E	PCW
Respondent	Boyett Construction, L.L.C.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	34764	<i>PCW Revision September 19, 2007</i>		
Reg. Ent. Reference No.	RN105205942			
Media [Statute]	Water Quality			
Enf. Coordinator	Thomas Jecha			

Violation Number

Rule Cite(s)

Violation Description Failed to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state. Specifically, sediment discharged off-site along the northern boundary of the Site where control measures were absent and to a marshy area adjacent to Sabine Lake along the southern boundary of the Site where control measures were in need of repair or replacement.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		x
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>	

>> Programmatic Matrix

Falsification				
Major	Moderate	Minor	Percent	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants 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"/>
monthly	<input type="text"/>
quarterly	x
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$43"/>	Violation Final Penalty Total <input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent **Boyett Construction, L.L.C.**
 Case ID No. **34764**
 Reg. Ent. Reference No. **RN105205942**
 Media **Water Quality**
 Violation No. **3**

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	22-Aug-2007	29-Jun-2008	0.9	\$43	n/a	\$43

Notes for DELAYED costs

Estimated cost to install and repair control measures needed to retain sediment on-site. The Date Required is the investigation date 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$43

Compliance History

Customer/Respondent/Owner-Operator: CN603177114 BOYETT CONSTRUCTION, L.L.C. Classification: Average Rating: 4.0
Regulated Entity: RN105205942 LAQUINTA BRIDGE CITY Classification: Average Site Rating: 4.0

ID Number(s):
Location: 108 TEXAS AVENUE, BRIDGE CITY, TX, 77611 Rating Date: Sept. 1, 2007
Repeat Violator: No

TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prep: October 09, 2007
Agency Decision Requiring Compliance Enforcement
Compliance Period: October 09, 2002 to October 09, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Thomas Jecha Phone: 512 239 2576

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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, 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 06/21/2007 (563465)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/15/2007 (557767)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Description: Failure by Boyett Construction to obtain a Construction General Permit TXR150000 (CGP) to authorize the discharge of storm water.

Self Report? NO

Classification: Moderate

Citation: TWC Chapter 26 26.121(a)(1)

Description: Failure by Boyett Construction to prevent the unauthorized discharge of sediment onto Texas Highway 87.

- 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
BOYETT CONSTRUCTION, L.L.C.
RN105205942**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1666-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Boyett Construction, L.L.C. ("the 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 appear before the Commission and together stipulate that:

1. The Respondent operates a hotel construction site at 108 Texas Avenue in Bridge City, Orange County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission 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 October 8, 2007.
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 One Thousand Six Hundred Eighty Dollars (\$1,680) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The Respondent has paid One Thousand Three Hundred Forty-Four Dollars (\$1,344) of the administrative penalty and Three Hundred Thirty-Six Dollars (\$336) 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 fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require 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 of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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.
10. 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.
11. 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:

1. Failed to develop a Storm Water Pollution Prevention Plan ("SWP3") according to the provisions of the general permit, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000, Part III, Section F.1(a), (b), (d), (e), (f)(i), (f)(iii), and F.5(b), as documented during an investigation conducted on August 22, 2007. Specifically, the SWP3 did not include: a general location map; a description of potential pollutants and sources; a description of the intended schedule/sequence of major soil disturbing activities; soil or discharge quality data; drainage patterns anticipated after major grading activities; major structural control locations; and a description of construction and waste materials expected to be stored on-site and controls to reduce pollutants from these materials.
2. Failed to conduct an inspection of the controls at the Site at least once every 14 days and within 24 hours of the end of a storm event of 0.5 inch or greater, or once every 7 days, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and TPDES General Permit No. TXR150000, Part III, Section F.8(a), as documented during an investigation conducted on August 22, 2007.
3. Failed to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III, Section F.2(a) and F.7, and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on August 22, 2007.

Specifically, sediment discharged off-site along the northern boundary of the site where control measures were absent and to a marshy area adjacent to Sabine Lake along the southern boundary of the site where control measures were in need of repair or replacement.

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: Boyett Construction, L.L.C., Docket No. 2007-1666-WQ-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, begin conducting inspections of the sediment control measures at the Site at least once every 14 days and within 24 hours of the end of a storm event of 0.5 inch or greater, or once every 7 days;
 - b. Within 30 days after the effective date of this Agreed Order, revise the SWP3 to include: a general location map; a description of potential pollutants and sources; a description of the intended schedule/sequence of major soil disturbing activities; soil or discharge quality data; drainage patterns anticipated after major grading activities; major structural control locations; a description of construction and waste materials expected to be stored on-site and controls to reduce pollutants from these materials; and the frequency and a checklist for inspections of structural controls;
 - c. Within 60 days after the effective date of this Agreed Order, ensure that sediment control measures are adequately designed and installed to retain sediment on-site to the extent practicable and remove and properly dispose of sediment that has discharged along the northern and southern boundaries of the Site; and
 - d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering

Provision Nos. 2.a. through 2.c. The certification shall be notarized by a State of Texas Notary Public and 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 certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. 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.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. 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. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Boyett Construction, L.L.C.
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

2/14/2008
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.

X *Wayne Neil Liedtke*
Signature

2/5/08
Date

Wayne Neil Liedtke
Name (Printed or typed)
Authorized Representative of
Boyett Construction, L.L.C.

OWNER
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.

