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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-0050-WQ-E TCEQ ID: RN104332945 CASE NO.: 23303
RESPONDENT NAME: COWBOY FOUNDATIONS AND CONSTRUCTION, INC.

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

SITE WHERE VIOLATION(S) OCCURRED: 19485 Marbach Lane, Bracken, Comal County

TYPE OF OPERATION: Sand and gravel quarry

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 31, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492
TCEQ Regional Contact: Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050
Respondent: Mr. Mike Lozano, Registered Agent, Cowboy Foundations and Construction, Inc., 1911 Air Lawn Street,
 San Antonio, Texas 78227
Respondent's Attorney: Mr. Erich Birch, Birch, Becker & Moorman, LLP, 7000 North Mopac Expressway,
 Austin, Texas 78731

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 3, 2004</p> <p>Date of NOE Relating to this Case: July 16, 2004 (NOV) and December 13, 2004 (NOE)</p> <p>Background Facts:</p> <p>An agreement was reached on February 6, 2008 and a signed Agreed Order was received on February 7, 2008.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>WQ:</p> <p>Failed to have authorization to discharge stormwater from an industrial activity requiring a permit [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(a)].</p>	<p>Total Assessed: \$3,800</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$175/\$3,625</p> <p>The Respondent has paid \$175 of the administrative penalty. The remaining amount of \$3,625 of the administrative penalty shall be payable in 29 monthly payments of \$125 each.</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent discontinued operation of the Facility on September 30, 2004</p>



Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision December 10, 2004

DATES	Assigned 20-Dec-2004	Screening 03-Jan-2005	Priority Due 18-Feb-2005	EPA Due
	PCW 28-Apr-2008			

RESPONDENT/FACILITY INFORMATION	
Respondent	Cowboy Foundations and Construction, Inc.
Reg. Ent. Ref. No.	RN104332945
Additional ID No(s)	None
Facility/Site Region	13-San Antonio <input type="button" value="<"/> Major/Minor Source Minor Source <input type="button" value=">"/>

CASE INFORMATION	
Enf./Case ID No. 23303	No. of Violations 1
Docket No. 2005-0050-WQ-E	Order Type 1660 without deferral <input type="button" value="<"/>
Case Priority 2 <input type="button" value="<"/>	Enf. Coordinator Michael Meyer
Media Program(s) Water Quality <input type="button" value="<"/>	EC's Team Enforcement Team 7 <input type="button" value="<"/>
Multi-Media	
Admin. Penalty \$ Limit Minimum \$0	Maximum \$10,000

Penalty Calculation Section	
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 \$4,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
Compliance History 5% Enhancement	Subtotals 2, 3, & 7 \$200
Notes There was a previous NOV for same or similar violations dated 7/16/2004.	
Culpability No <input type="button" value="<"/> 0% Enhancement	Subtotal 4 \$0
Notes The Respondent does not meet the culpability criteria.	
Good Faith Effort to Comply 10% Reduction	Subtotal 5 -\$400
<small>Before NOV NOV to EDRP/Settlement Offer</small>	
Extraordinary <input type="checkbox"/>	
Ordinary <input checked="" type="checkbox"/>	
N/A <input type="checkbox"/> <small>(mark with a small x)</small>	
Notes The Respondent achieved compliance on 9/30/2004.	
Economic Benefit 0% Enhancement*	Subtotal 6 \$0
<small>Total EB Amounts</small> \$133	<small>*Capped at the Total EB \$ Amount</small>
<small>Approx. Cost of Compliance</small> \$2,000	
SUM OF SUBTOTALS 1-7	Final Subtotal \$3,800
OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment \$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)</small>	
Notes	
	Final Penalty Amount \$3,800
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty \$3,800
DEFERRAL	Adjustment \$0
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
Notes No deferral is offered for non-expedited cases.	
PAYABLE PENALTY	\$3,800

Screening Date 03-Jan-2005	Docket No. 2005-0050-WQ-E	PCW
Respondent Cowboy Foundations and Construction, Inc.		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 23303		<i>PCW Revision December 10, 2004</i>
Reg. Ent. Reference No. RN104332945		
Additional ID No(s). None		
Media [Statute] Water Quality		
Enf. Coordinator Michael Meyer		
Site Address	19485 Marbach Lane, Bracken, Comal County	

Compliance History Worksheet

>> Compliance History *Site Enhancement* (Subtotal 2)

Component	Number of...	<i>Enter Number Here</i>	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</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)

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History *Person Classification* (Subtotal 7)

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes There was a previous NOV for same or similar violations dated 7/16/2004.

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

Screening Date 03-Jan-2005 **Docket No.** 2005-0050-WQ-E **PCW**
Respondent Cowboy Foundations and Construction, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 23303 *PCW Revision December 10, 2004*
Reg. Ent. Reference No. RN104332945
Additional ID No(s). None
Media [Statute] Water Quality
Enf. Coordinator Michael Meyer
Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(a)
Secondary Rule Cite(s)

Violation Description
 Failure to have authorization to discharge stormwater from an industrial activity requiring a permit. Specifically, the Respondent was operating a sand and gravel pit without authorization to discharge stormwater, as documented during an investigation conducted by the TCEQ San Antonio Regional Office on 6/3/2004.

Base Penalty \$10,000

>> **Environmental, Property and Human Health Matrix**

OR

		Harm			
Release		Major	Moderate	Minor	
Actual					Percent <input type="text"/>
Potential					

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	
	X			Percent <input type="text" value="10%"/>

Matrix Notes 100 percent of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 4

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$4,000

Four monthly events are recommended from the date of the 6/3/2004 investigation to date the Respondent ceased operations (9/30/2004).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$133

Violation Final Penalty Total \$3,800

This violation Final Assessed Penalty (adjusted for limits) \$3,800

Economic Benefit Worksheet

Respondent Cowboy Foundations and Construction, Inc.
 Case ID No. 23303
 Reg. Ent. Reference No. RN104332945
 Additional ID No(s). None
 Media [Statute] 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
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	\$2,000	03-Jun-2004	30-Sep-2005	1.3	\$133	n/a	\$133
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: This is the cost of submitting a Notice of Intent ("NOI") and storm water pollution prevention plan (SWP3). Date Required is the investigation date; Final Date is the expected date of compliance.

Item	Annualized Cost	Yrs	Interest Saved	Onetime Costs	EB Amount
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 **\$2,000** TOTAL **\$133**

Compliance History

Customer/Respondent/Owner-Operator:	CN602636078 COWBOY FOUNDATIONS AND CONSTRUCTION INC	Classification: AVERAGE	Rating: 4.250
Regulated Entity:	RN104332945 NACHODOCHES PIT	Classification: AVERAGE	Site Rating: 2.50
ID Number(s):	STORMWATER PERMIT		R13ST0127
Location:	19485 MARBACH LN, BRACKEN, TX, 78266	Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	December 28, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 28, 1999 to December 28, 2004		

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

Name: Michael Meyer Phone: (512) 239-4492

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |
| 6. Comments: | |

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 12/13/2004 (336288)
 - 2 07/16/2004 (282626)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 07/16/2004 (282626)
 - Self Report? NO Classification: Major
 - Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 - Description: Failure to develop and implement a Storm Water Pollution Prevention Plan and obtain proper permit.
- 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
COWBOY FOUNDATIONS AND
CONSTRUCTION, INC.,
RN104332945

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-0050-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Cowboy Foundations and Construction, Inc. ("Cowboy Foundations") under the authority of TEX. WATER CODE ch. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Cowboy Foundations, represented by Erich Birch of the law firm of Birch, Becker & Moorman, LLP, appear before the Commission and together stipulate that:

1. Cowboy Foundations operated a sand and gravel quarry located at 19485 Marbach Lane, Bracken, Comal County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Cowboy Foundations agree that the Commission has jurisdiction to enter this Agreed Order, and that Cowboy Foundations is subject to the Commission's jurisdiction.
4. Cowboy Foundations received notice of the violations alleged in Section II ("Allegations") on or about July 21, 2004 and December 18, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Cowboy Foundations of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of three thousand eight hundred dollars (\$3,800.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Cowboy Foundations has paid one hundred seventy five dollars (\$175.00) of the administrative penalty. The remaining amount of three thousand six hundred twenty-five dollars (\$3,625.00) of the administrative penalty shall be payable in 29 monthly payments of one hundred twenty-five dollars (\$125.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Cowboy Foundations fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Cowboy Foundations to meet the payment schedule of this Agreed Order constitutes the failure by Cowboy Foundations to timely and satisfactorily comply with all of the terms of this Agreed Order.
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 Cowboy Foundations have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Cowboy Foundations discontinued operation of the Facility on September 30, 2004.
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 Cowboy Foundations 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

Cowboy Foundations is alleged to have violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(a) by failing to have authorization to discharge stormwater from an industrial activity requiring a permit. Specifically, the Respondent was operating a sand and gravel pit without authorization to discharge stormwater as documented on June 3, 2004.

III. DENIALS

Cowboy Foundations generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Cowboy Foundations pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Cowboy Foundations' 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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Cowboy Foundations and Construction, Inc., Docket No. 2005-0050-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. The provisions of this Agreed Order shall apply to and be binding upon Cowboy Foundations. Cowboy Foundations is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Cowboy Foundations 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 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.

5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Cowboy Foundations, or three days after the date on which the Commission mails notice of the Order to Cowboy Foundations, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Cowboy Foundations and Construction, Inc.
DOCKET NO. 2003-0090-WQ-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

2/21/08

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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



Signature

2/7/08

Date

Miguel A. LOZANO

Name (Printed or typed)

Director

Title

Authorized representative of
Cowboy Foundations and Construction, Inc.