**CAPTION: Docket No. 2008-0175-WQ-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Lankford Construction, L.L.C. in Nacogdoches County; RN105368542; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Suzanne Walrath, Bryan Sinclair)**

# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO.:** 2008-0175-WQ-E **TCEQ ID:** RN105368542 **CASE NO.:** 35312

**RESPONDENT NAME:** Lankford Construction, L.L.C.

| ORDER TYPE: | | |
|---|---|---|
| X 1660 AGREED ORDER | __FINDINGS AGREED ORDER | __FINDINGS ORDER FOLLOWING SOAH HEARING |
| __FINDINGS DEFAULT ORDER | __SHUTDOWN ORDER | __IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| __AMENDED ORDER | __EMERGENCY ORDER | |
| CASE TYPE: | | |
| __AIR | __MULTI-MEDIA (check all that apply) | __INDUSTRIAL AND HAZARDOUS WASTE |
| __PUBLIC WATER SUPPLY | __PETROLEUM STORAGE TANKS | __OCCUPATIONAL CERTIFICATION |
| X WATER QUALITY | __SEWAGE SLUDGE | __UNDERGROUND INJECTION CONTROL |
| __MUNICIPAL SOLID WASTE | __RADIOACTIVE WASTE | __DRY CLEANER REGISTRATION |

**SITE WHERE VIOLATION(S) OCCURRED:** Nacogdoches Vista Pines Apartment Homes, 1602 Park Street, Nacogdoches, Nacogdoches County

**TYPE OF OPERATION:** Construction site

**SMALL BUSINESS:** __X__ **Yes** ____ **No**

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

**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 August 4, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None

**TCEQ Enforcement Coordinator:** Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2134; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

**Respondent:** Mr. Michael Lankford, President/Principle, Lankford Construction, L.L.C., 4900 Woodway Drive, Suite 750, Houston, Texas 77056

**Respondent's Attorney:** Not represented by counsel on this enforcement matter

## VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| **Type of Investigation:**<br>__ Complaint<br>X Routine<br>__ Enforcement Follow-up<br>__ Records Review<br><br>**Date(s) of Complaints Relating to this Case:** None<br><br>**Date of Investigation Relating to this Case:** December 13, 2007<br><br>**Date of NOV/NOE Relating to this Case:** December 19, 2007 (NOE)<br><br>**Background Facts:** This was a routine investigation.<br><br>**WATER**<br><br>1) Failure to post a Notice of Intent ("NOI") and a site notice. Specifically, a NOI and a site notice were not posted at the construction Site on the date of the investigation [30 TEX. ADMIN. CODE § 281.25(a)(4), Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15IF07, Part II, Section D.3.(d) and Part III, Section D.2., and 40 CODE OF FEDERAL REGULATIONS ("CFR") Part 122].<br><br>2) Failure to have the storm water pollution prevention plan ("SWP3") and related documents readily available at the time of the on-site investigation. Specifically, the document was requested by the investigator, but it was not available [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR15IF07, Part III, Section D.1., and 40 CFR Part 122].<br><br>3) Failed to properly install and maintain sediment controls, resulting in discharges of sediment into an unnamed creek and to an adjacent land owner's pond. Specifically, the silt fencing along the west side of the Site was in need of maintenance in three areas, and a silt fence near the sedimentation basin outflow pipe was not trenched in to prevent water from flowing under it [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES Permit No. | **Total Assessed:** $4,200<br><br>**Total Deferred:** $840<br>X Expedited Settlement<br><br>__Financial Inability to Pay<br><br>**SEP Conditional Offset:** $0<br><br>**Total Paid to General Revenue:** $3,360<br><br>**Site Compliance History Classification**<br>__ **High** X **Average** __ **Poor**<br><br>**Person Compliance History Classification**<br>__ **High** X **Average** __ **Poor**<br><br>**Major Source:** __ Yes X No<br><br>**Applicable Penalty Policy:** September 2002 | **Ordering Provisions:**<br><br>The Order will require the Respondent to:<br><br>a. Immediately upon the effective date of this Agreed Order, have the SWP3 available on-site at all times;<br><br>b. Immediately upon the effective date of this Agreed Order, post the NOI and a site notice at the construction Site and have it posted at all times;<br><br>c. Within 30 days after the effective date of this Agreed Order, remove and dispose of the sediment and any debris remaining in the collection area to an authorized facility;<br><br>d. Within 45 days after the effective date of this Agreed Order, properly install and maintain sediment controls in a manner so that they perform adequately. Specifically, complete trenching and all repairs on the silt fencing; and<br><br>e. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provisions a. through d. |

| | | |
|---|---|---|
| TXR15IF07, Part III, Section F.2.(a)(i) and F.2.(a)(ii), TEX. WATER CODE § 26.121(a)(2) and 40 CFR Part 122]. | | |

Additional ID No(s).: N/A

# Penalty Calculation Worksheet (PCW)

*Policy Revision 2 (September 2002)* *PCW Revision November 6, 2007*

TCEQ

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 2-Jan-2008 | | | | |
| PCW | 28-Feb-2008 | Screening | 15-Jan-2008 | EPA Due | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | Lankford Construction, L.L.C. | | |
| Reg. Ent. Ref. No. | RN105368542 | | |
| Facility/Site Region | 10-Beaumont | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 35312 | No. of Violations | 3 |
| Docket No. | 2008-0175-WQ-E | Order Type | 1660 |
| Media Program(s) | Water Quality | Enf. Coordinator | Suzanne Walrath |
| Multi-Media | | EC's Team | Enforcement Team 3 |
| 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**

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* **$200**

Notes: The Respondent received one NOV for same or similar violations.

**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**

**Capped at the Total EB $ Amount*

| | |
|---|---|
| Total EB Amounts | $455 |
| Approx. Cost of Compliance | $10,800 |

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **$4,200**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0%** *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount* **$4,200**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **$4,200**

**DEFERRAL** **20%** Reduction *Adjustment* **-$840**

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **$3,360**

**Screening Date** 15-Jan-2008 **Docket No.** 2008-0175-WQ-E **PCW**

**Respondent** Lankford Construction, L.L.C.

*Policy Revision 2 (September 2002)*

**Case ID No.** 35312

*PCW Revision November 6, 2007*

**Reg. Ent. Reference No.** RN105368542

**Media [Statute]** Water Quality

**Enf. Coordinator** Suzanne Walrath

## 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 (*number of NOVs meeting criteria*) | 1 | 5% |
| | 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 judgements 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)*** 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**

The Respondent received one NOV for same or similar violations.

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

**Screening Date** 15-Jan-2008 **Docket No.** 2008-0175-WQ-E **PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision November 6, 2007*

**Respondent** Lankford Construction, L.L.C.

**Case ID No.** 35312

**Reg. Ent. Reference No.** RN105368542

**Media [Statute]** Water Quality

**Enf. Coordinator** Suzanne Walrath

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 281.25(a)(4), Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15IF07, Part II, Section D.3.(d) and Part III, Section D.2. and 40 Code of Federal Regulations ("CFR") Part 122

**Violation Description** Failed to post a Notice of Intent ("NOI") and a site notice. Specifically, a NOI and a site notice were not posted at the construction Site on the date of the investigation.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

Matrix Notes: 100% of the rule requirement was not met.

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 2

1 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

**Violation Base Penalty** $2,000

Two single events are recommended for the documents that were not posted (one for the NOI and one for the notice), as documented by the investigation conducted on December 13, 2007.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $11

## Statutory Limit Test

**Violation Final Penalty Total** $2,100

**This violation Final Assessed Penalty (adjusted for limits)** $2,100

# Economic Benefit Worksheet

**Respondent** Lankford Construction, L.L.C.
**Case ID No.** 35312
**Reg. Ent. Reference No.** RN105368542
**Media** Water Quality
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description (No commas or $) | 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 | | | | 0.0 | $0 | n/a | $0 |
| Other (as needed) | $300 | 13-Dec-2007 | 15-Sep-2008 | 0.8 | $11 | n/a | $11 |

**Notes for DELAYED costs**: This represents the cost to post the NOI and the site notice, beginning on the date of the investigation, and ending on the projected 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**: $300

**TOTAL**: $11

**Screening Date** 15-Jan-2008 **Docket No.** 2008-0175-WQ-E **PCW**

**Respondent** Lankford Construction, L.L.C. *Policy Revision 2 (September 2002)*

**Case ID No.** 35312 *PCW Revision November 6, 2007*

**Reg. Ent. Reference No.** RN105368542

**Media [Statute]** Water Quality

**Enf. Coordinator** Suzanne Walrath

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 281.25(a)(4), and TPDES General Permit No. TXR15IF07, Part III, Section D.1. and 40 CFR Part 122

**Violation Description** Failed to have the storm water pollution prevention plan ("SWP3") and related documents readily available at the time of the on-site investigation. Specifically, the document was requested at the time of the investigation, but it was not available.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

Matrix Notes: 100% of the rule requirement was not met.

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 1

1 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

**Violation Base Penalty** $1,000

One single event is recommended as documented by the investigation conducted on December 13, 2007.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $57

## Statutory Limit Test

**Violation Final Penalty Total** $1,050

**This violation Final Assessed Penalty (adjusted for limits)** $1,050

# Economic Benefit Worksheet

**Respondent** Lankford Construction, L.L.C.
**Case ID No.** 35312
**Reg. Ent. Reference No.** RN105368542
**Media** Water Quality
**Violation No.** 2

| 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 | | | | 0.0 | $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) | $1,500 | 13-Dec-2007 | 15-Sep-2008 | 0.8 | $57 | n/a | $57 |

**Notes for DELAYED costs**: These costs are to establish and begin implementing recordkeeping practices/procedures to ensure that the SWP3 is available at the Site at all times, beginning on the date of the investigation, and ending on the projected 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** $1,500

**TOTAL** $57

**Screening Date** 15-Jan-2008 **Docket No.** 2008-0175-WQ-E **PCW**

**Respondent** Lankford Construction, L.L.C.

*Policy Revision 2 (September 2002)*

**Case ID No.** 35312

*PCW Revision November 6, 2007*

**Reg. Ent. Reference No.** RN105368542

**Media [Statute]** Water Quality

**Enf. Coordinator** Suzanne Walrath

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code § 281.25(a)(4), TPDES Permit No. TXR15IF07, Part III, Section F.2.(a)(i) and F.2.(a)(ii), Tex. Water Code § 26.121(a)(2) and 40 CFR Part 122

**Violation Description** Failed to properly install and maintain sediment controls, resulting in discharges of sediment into an unnamed creek and to an adjacent land owner's pond, as documented during an investigation conducted on December 13, 2007. Specifically, the silt fencing along the west side of the site was in need of maintenance in three areas, and a silt fence near the sedimentation basin outflow pipe was not trenched in to prevent water from flowing under it.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

| | Release | Harm: Major | Moderate | Minor |
|---|---|---|---|---|
| OR | Actual | | | x |
| | Potential | | | |

**Percent** 10%

3000

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 1

33 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $1,000

One quarterly event is recommended beginning on the date of the investigation (December 13, 2007) to case screening date (January 15, 2008).

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $387

## Statutory Limit Test

**Violation Final Penalty Total** $1,050

**This violation Final Assessed Penalty (adjusted for limits)** $1,050

# Economic Benefit Worksheet

**Respondent** Lankford Construction, L.L.C.
**Case ID No.** 35312
**Reg. Ent. Reference No.** RN105368542
**Media** Water Quality
**Violation No.** 3

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | $3,000 | 13-Dec-2007 | 15-Sep-2008 | 0.8 | $8 | $152 | $159 |
| 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 | $3,000 | 13-Dec-2007 | 15-Sep-2008 | 0.8 | $114 | n/a | $114 |
| Permit Costs | | | | 0.0 | $0 | n/a | $0 |
| Other (as needed) | $3,000 | 13-Dec-2007 | 15-Sep-2008 | 0.8 | $114 | n/a | $114 |
| Notes for DELAYED costs | These costs are for the purchase and installation of additional silt fencing, proper trenching of the fence near the sedimentation outflow basin, and for cleanup and removal of sediment and debris, beginning on the date of the investigation, and ending on the projected 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 | | | | | | | |
| | | | | | | 33 | |
| Approx. Cost of Compliance | $9,000 | | | | TOTAL | | $387 |

# Compliance History

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN603179086 | Lankford Construction, L.L.C. | Classification: AVERAGE | Rating: 3.01 |
| Regulated Entity: | RN105368542 | NACOGDOCHES VISTA PINES APARTMENT HOMES | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01 |
| ID Number(s): | STORMWATER PERMIT TXR15IF07 | | | |
| Location: | 1602 PARK STREET, NACOGDOCHES, TX, 75961 | | Rating Date: September 01 07 | Repeat Violator: NO |

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: January 15, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 15, 2003 to January 15, 2008

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

Name: Suzanne Walrath Phone: 512/239-2134

## 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 11/08/2007 (599956)
2 12/19/2007 (612055)

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

Date: 11/08/2007 (599956)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Rqmt Prov: PERMIT TXR15IF07 Part II, Sec D(3)(d)
PERMIT TXR15IF07 Part III, Sec D(2)
Description: Failure by Lankford Construction to post a Notice of Intent and a site notice.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Rqmt Prov: PERMIT TXR15IF07 Part III, Sec D(1)
Description: Failure by Lankford Construction to have the SWP3 and related documents readily available at the time of an on-site inspection.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 299, SubChapter B 299.13
30 TAC Chapter 299, SubChapter B 299.14
Description: Failure by Lankford Construction to construct a dam that is compliant with the construction standards set forth in 30 Texas Administrative Code (TAC) 299.

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** | § | **BEFORE THE** |
| **ENFORCEMENT ACTION** | § | |
| **CONCERNING** | § | **TEXAS COMMISSION ON** |
| **LANKFORD CONSTRUCTION, L.L.C.** | § | |
| **RN105368542** | § | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2008-0175-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 Lankford 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 owns and operates a construction site at 1602 Park Street in Nacogdoches, Nacogdoches County, Texas (the "Site").

2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.

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 December 24, 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 Four Thousand Two Hundred Dollars ($4,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Three Hundred Sixty Dollars ($3,360) of the administrative penalty and Eight Hundred Forty Dollars ($840) 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 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 post a Notice of Intent ("NOI") and a site notice, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15IF07, Part II, Section D.3.(d) and Part III, Section D.2. and 40 CODE OF FEDERAL REGULATIONS ("CFR") Part 122, as documented during an investigation conducted on December 13, 2007. Specifically, a NOI and a site notice were not posted at the construction Site on the date of the investigation.

2. Failed to have the storm water pollution prevention plan ("SWP3") and related documents readily available at the time of the on-site investigation, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR15IF07, Part III, Section D.1. and 40 CFR Part 122, as documented during an investigation conducted on December 13, 2007. Specifically, the document was requested by the investigator, but it was not available.

3. Failed to properly install and maintain sediment controls, resulting in discharges of sediment into an unnamed creek and to an adjacent land owner's pond, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES Permit No. TXR15IF07, Part III, Section F.2.(a)(i) and F.2.(a)(ii), TEX. WATER CODE § 26.121(a)(2) and 40 CFR Part 122, as documented during an investigation conducted on December 13, 2007. Specifically, the silt fencing along the west side of the Site was in need of maintenance in three areas, and a silt fence near the sedimentation basin outflow pipe was not trenched in to prevent water from flowing under it.

## 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: Lankford Construction, L.L.C., Docket No. 2008-0175-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, have the SWP3 available on-site at all times;

   b. Immediately upon the effective date of this Agreed Order, post the NOI and a site notice at the construction Site and have it posted at all times;

   c. Within 30 days after the effective date of this Agreed Order, remove and dispose of the sediment and any debris remaining in the collection area to an authorized facility;

   d. Within 45 days after the effective date of this Agreed Order, properly install and maintain sediment controls in a manner so that they perform adequately. Specifically, complete trenching and all repairs on the silt fencing; and

   e. Within 60 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. 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.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 8/8/2008
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.

_____ 5.14.08
Signature Date

MICHAEL LANKFORD PRINCIPLE
Name (Printed or typed) Title
Authorized Representative of
Lankford Construction, L.L.C.

**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.