

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2009-0658-EAQ-E **TCEQ ID:** RN105688303 **CASE NO.:** 37579  
**RESPONDENT NAME:** Leander Independent School District

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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 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 checked="" type="checkbox"/> EDWARDS AQUIFER
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Gupton Way, connecting east Park Street and Brushy Creek Road, Cedar Park, Williamson County</p> <p><b>TYPE OF OPERATION:</b> Roadway construction project site</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 12, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Jimmy Disler, Executive Director of Capital Improvements, Leander Independent School District, P.O. Box 218, Leander, Texas 78646  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 6, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 28, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>Failure to obtain approval of a contributing zone plan ("CZP") prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the investigator observed evidence of ongoing construction on approximately 4.5 acres, including cleared areas and roadway materials present on the Site [30 TEX. ADMIN. CODE § 213.23(a)(1)].</p>	<p><b>Total Assessed:</b> \$1,500</p> <p><b>Total Deferred:</b> \$300  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,200</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent submitted a CZP on February 6, 2009 and obtained approval of the plan on April 28, 2009.</p>

Additional ID No(s): 11-09020601



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	4-May-2009	Screening	6-May-2009	EPA Due	
	PCW	7-May-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Leander Independent School District		
Reg. Ent. Ref. No.	RN105688303		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37579	No. of Violations	1
Docket No.	2009-0658-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Samuel Short
		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**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History**  **Subtotals 2, 3, & 7**

Notes

**Culpability**   **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  **Subtotal 6**

Total EB Amounts	\$47
Approx. Cost of Compliance	\$6,500

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

**Screening Date** 6-May-2009

**Docket No.** 2009-0658-EAQ-E

**PCW**

**Respondent** Leander Independent School District

*Policy Revision 2 (September 2002)*

**Case ID No.** 37579

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105688303

**Media [Statute]** Edwards Aquifer

**Enf. Coordinator** Samuel Short

**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>	0	0%
	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)** 0%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

No change due to Average Performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

<b>Screening Date</b> 6-May-2009	<b>Docket No.</b> 2009-0658-EAQ-E	<b>PCW</b>	
<b>Respondent</b> Leander Independent School District	Policy Revision 2 (September 2002)		
<b>Case ID No.</b> 37579	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b> RN105688303			
<b>Media [Statute]</b> Edwards Aquifer			
<b>Enf. Coordinator</b> Samuel Short			
<b>Violation Number</b> 1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 213.23(a)(1)		
<b>Violation Description</b>	Failed to obtain approval of a contributing zone plan ("CZP") prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the investigator observed evidence of ongoing construction on approximately 4.5 acres, including cleared areas and roadway materials present on the Site.		
<b>Base Penalty</b>		\$10,000	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
Harm			
Release	Major	Moderate	Minor
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Percent</b>		0%	
<b>&gt;&gt; Programmatic Matrix</b>			
Falsification			
Major	Moderate	Minor	
x	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Percent</b>		10%	
<b>Matrix Notes</b>	100% of the rule requirement was not met.		
<b>Adjustment</b>		\$9,000	
		\$1,000	
<b>Violation Events</b>			
<b>Number of Violation Events</b>	2	<b>Number of violation days</b>	53
mark only one with an x	daily	<input type="checkbox"/>	
	weekly	<input type="checkbox"/>	
	monthly	x	
	quarterly	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input type="checkbox"/>	
<b>Violation Base Penalty</b>		\$2,000	
Two monthly events are recommended from the March 6, 2009 date of investigation to the date the plan was approved, April 28, 2009.			
<b>Good Faith Efforts to Comply</b>			
<b>25.0% Reduction</b>		\$500	
Before NOV    NOV to EDRP/Settlement Offer			
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	x	<input type="checkbox"/>	
N/A	<input type="checkbox"/>	(mark with x)	
<b>Notes</b>	The Respondent achieved compliance on April 28, 2009.		
<b>Violation Subtotal</b>		\$1,500	
<b>Economic Benefit (EB) for this violation</b>			
<b>Statutory Limit Test</b>			
<b>Estimated EB Amount</b>	\$47	<b>Violation Final Penalty Total</b>	\$1,500
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	
		\$1,500	

## Economic Benefit Worksheet

**Respondent** Leander Independent School District  
**Case ID No.** 37579  
**Reg. Ent. Reference No.** RN105688303  
**Media** Edwards Aquifer  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$6,500	6-Mar-2009	28-Apr-2009	0.15	\$47	n/a	\$47
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs** Estimated cost to prepare, submit the application and obtain approval of an Edwards Aquifer CZP. Date required is the investigation date. Final date is the date the Edwards Aquifer CZP was approved.

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance** \$6,500

**TOTAL** \$47

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600781074 Leander Independent School District Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN105688303 GUPTON WAY Classification: Site Rating:  
ID Number(s): EDWARDS AQUIFER REGISTRATION 11-09020601  
Location: CONNECTS E PARK ST & BRUSHY CREEK ROAD  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: May 06, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 06, 2004 to May 06, 2009

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

Name: Samuel Short Phone: (512) 239-5363

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

## 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 04/29/2009 (736934)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
LEANDER INDEPENDENT SCHOOL  
DISTRICT  
RN105688303**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-0658-EAQ-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 Leander Independent School District ("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 roadway construction project site that connects east Park Street and Brushy Creek Road in Cedar Park, Williamson 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 May 3, 2009.
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 Five Hundred Dollars (\$1,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The Respondent has paid One Thousand Two Hundred Dollars (\$1,200) of the administrative penalty and Three Hundred Dollars (\$300) 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 recognizes that the Respondent submitted a contributing zone plan ("CZP") on February 6, 2009 and obtained approval of the plan on April 28, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain approval of a CZP prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.23(a)(1), as documented during an investigation conducted on March 6, 2009. Specifically, the investigator observed evidence of ongoing construction on approximately 4.5 acres, including cleared areas and roadway materials present on the Site.

## 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: Leander Independent School District, Docket No. 2009-0658-EAQ-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Leander Independent School District  
DOCKET NO. 2009-0658-EAQ-E  
Page 4

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Zedler  
For the Executive Director

9/18/09  
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.

Jimmy Disler  
Signature

August 5, 2009  
Date

Jimmy Disler  
Name (Printed or typed)  
Authorized Representative of  
Leander Independent School District

Executive Director, Capital Improvements	
Title	

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