EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1419-WQ-E **TCEQ ID:** RN101560324 **CASE NO.:** 36469

RESPONDENT NAME: Jeske Construction Co.

ORDER TYPE:		
__1660 AGREED ORDER	X 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: Jeske Construction Co., 2546 Merrell Road, Dallas, Dallas County with road construction activities at 800 Easton Road, Dallas, Dallas County

TYPE OF OPERATION: Construction company

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 February 2, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Steve Jeske, President/Owner, Jeske Construction Co., P.O. Box 59025, Dallas, Texas 75229

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: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** May 23, 2008 **Date of NOV/NOE Relating to this Case:** August 11, 2008 (NOE) **Background Facts:** This was a routine investigation. TCEQ staff documented that during road construction activities at 800 Easton Road, approximately 1,000 pounds of lime slurry ran over a berm and into the street where some of the lime slurry flowed and/or was washed into a storm drain which flowed to an unnamed creek and then into the Dixon Branch of White Rock Lake killing approximately fifteen fish. **WATER** Failure to prevent the unauthorized discharge of lime slurry into or adjacent to the water in the state [TEX. WATER CODE § 26.121].	**Total Assessed:** $7,500 **Total Deferred:** $0 __Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $7,500 **Site Compliance History Classification** **__ High __ Average __ Poor** **Person Compliance History Classification** **__ High _X_ Average __ Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002 **Findings Orders Justification:** Environmental receptors have been exposed to pollutants which exceed levels that are protective.	**Corrective Actions Taken:** The Executive Director recognizes that on May 22, 2008, the Respondent hired an environmental contractor that thoroughly flushed and vacuumed out the storm drains, diverted the creek flow until the cleanup was complete, vacuumed the creek bottom to remove the lime, and completed the cleanup on May 23, 2008.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

TCEQ

DATES					
Assigned	18-Aug-2008				
PCW	9-Sep-2008	Screening	3-Sep-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Jeske Construction Co.		
Reg. Ent. Ref. No.	RN101560324		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36469	No. of Violations	1
Docket No.	2008-1419-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
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* $10,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: No change due to average performer classification.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $2,500

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $2
Approx. Cost of Compliance $15,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $7,500

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $7,500

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $7,500

DEFERRAL 0.0% Reduction — *Adjustment* $0

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY $7,500

Screening Date 3-Sep-2008 **Docket No.** 2008-1419-WQ-E **PCW**

Respondent Jeske Construction Co. *Policy Revision 2 (September 2002)*

Case ID No. 36469 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101560324

Media [Statute] Water Quality

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of 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) 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%

Screening Date 3-Sep-2008 **Docket No.** 2008-1419-WQ-E **PCW**

Respondent Jeske Construction Co. *Policy Revision 2 (September 2002)*

Case ID No. 36469 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101560324

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121

Violation Description Failed to prevent the unauthorized discharge of lime slurry into or adjacent to the water in the state. Specifically, on May 22, 2008, during road construction activities at 800 Easton Road, approximately 1,000 pounds of lime slurry ran over a berm and into the street where some of the lime slurry flowed and/or was washed into a storm drain which flowed to an unnamed creek and then into the Dixon Branch of White Rock Lake killing approximately fifteen fish.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual	x		
	Potential			

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $5,000

$5,000

Violation Events

Number of Violation Events 2 | 2 Number of violation days

mark only one with an x

daily	x
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $10,000

Two daily events are recommended from the May 22, 2008 date that the spill occurred at approximately 11:00 am to the date that the cleanup was complete, May 23, 2008 at approximately 7:00 pm.

Good Faith Efforts to Comply

25.0% Reduction $2,500

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes: The Respondent returned to compliance on May 23, 2008.

Violation Subtotal $7,500

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $7,500

This violation Final Assessed Penalty (adjusted for limits) $7,500

Economic Benefit Worksheet

Respondent Jeske Construction Co.
Case ID No. 36469
Reg. Ent. Reference No. RN101560324
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$15,000	22-May-2008	23-May-2008	0.00	$2	n/a	$2
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: The estimated cost to hire an environmental contractor to thoroughly flush and vacuum out the storm drains, divert the creek flow until the cleanup was complete, and vacuum the creek bottom to remove the lime. Date required is the date the discharge occurred and the final date is the date the cleanup was complete.

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: $15,000

TOTAL: $2

Compliance History

Customer/Respondent/Owner-Operator:	CN600825426	JESKE CONSTRUCTION CO	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101560324	JESKE CONSTRUCTION CO	Classification:	Site Rating:

ID Number(s):

Location: 2546 MERRELL RD, DALLAS, TX, 75229

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: August 25, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 25, 2003 to August 25, 2008

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? No
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 08/11/2008 (686584)

N/A

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

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**
JESKE CONSTRUCTION CO.	§	
RN101560324	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1419-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jeske Construction Co. ("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 presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a construction company at 2546 Merrell Road in Dallas, Dallas County, Texas. The Respondent was conducting road construction activities at 800 Easton Road in Dallas, Dallas County, Texas (the "Site").

2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. During an investigation on May 23, 2008, TCEQ staff documented that during road construction activities at 800 Easton Road, approximately 1,000 pounds of lime slurry ran over a berm and into the street where some of the lime slurry flowed and/or was washed into a storm drain which flowed to an unnamed creek and then into the Dixon Branch of White Rock Lake killing approximately fifteen fish.

4. The Respondent received notice of the violations on August 16, 2008.

5. The Executive Director recognizes that on May 22, 2008 the Respondent hired an environmental contractor that thoroughly flushed and vacuumed out the storm drains, diverted the creek flow until the cleanup was complete, vacuumed the creek bottom to remove the lime and completed the cleanup on May 23, 2008.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of lime slurry into or adjacent to the water in the state, in violation of TEX. WATER CODE § 26.121.

3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of Seven Thousand Five Hundred Dollars ($7,500) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Seven Thousand Five Hundred Dollar ($7,500) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Seven Thousand Five Hundred Dollars ($7,500) as set forth in Section II, Paragraph 4 above, for violations of TCEQ

rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jeske Construction Co., Docket No. 2008-1419-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 the Respondent.

3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

4. 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.

5. 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.

6. 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.

7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ _____
For the Executive Director Date 1/22/2009

I, the undersigned, have read and understand the attached Agreed Order in the matter of Jeske Construction Co. I am authorized to agree to the attached Agreed Order on behalf of Jeske Construction Co., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Jeske Construction Co. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

_____ 11-21-08
Signature Date

STEVE JESKE PRESIDENT
Name (Printed or typed) Title
Authorized Representative of
Jeske Construction Co.

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.