

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-1796-WQ-E **TCEQ ID:** RN104682257 **CASE NO.:** 36820

**RESPONDENT NAME:** Mira Vista, Inc.

<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 checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Mira Vista Bella Vista Estates, located at the intersection of Farm-to-Market Road 707 and Thompson Parkway, Abilene, Taylor County</p> <p><b>TYPE OF OPERATION:</b> Residential construction site</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on October 17, 2008, alleging that there was sediment in the street from the construction site. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 9, 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. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2576; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Danial Mason, Member/Manager, Mira Vista, Inc., 2052 Industrial Boulevard, Abilene, Texas 79602  <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 checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      October 17, 2008</p> <p><b>Date of Investigation Relating to this Case:</b> October 23, 2008</p> <p><b>Date of NOE Relating to this Case:</b>                      November 5, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failure to properly install and maintain storm water structural controls according to the manufacturer's specifications and install storm water structural controls at all down slope boundaries of the construction site to divert flows away from exposed soils and lessen off-site transport of eroded soils. Specifically, some erosion control logs were not properly installed and maintained at 4225 Margaritas Way and erosion control logs were in need of maintenance at the lot adjacent to the west side of 8102 Thompson Parkway. Also, additional storm water structural controls were needed at 4510 Margaritas Way [30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15S820 Part III, Section F.2(a)(ii) and 2(c)(i)(B)].</p> <p>2) Failure to remove accumulations of sediment transported from the construction site. Specifically, sediment from the construction site was observed in the street at the intersection of Margaritas Way and Thompson Parkway [30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a), and TPDES General Permit No. TXR15S820 Part III, Section F.6(d)].</p>	<p><b>Total Assessed:</b> \$2,000</p> <p><b>Total Deferred:</b> \$400  <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> \$1,600</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" 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 has implemented the following corrective measures at the Site:</p> <p>a) Properly installed and began maintaining erosion control logs at 4225 Margaritas Way and the lot adjacent to the west side of 8102 Thompson Parkway on October 31, 2008;</p> <p>b) Removed sediment from the street at the intersection of Margaritas Way and Thompson Parkway on November 5, 2008; and</p> <p>c) Installed additional erosion control logs at 4510 Margaritas Way on October 31, 2008.</p>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

DATES	Assigned	10-Nov-2008			
	PCW	19-Nov-2008	Screening	18-Nov-2008	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Mira Vista, Inc.		
Reg. Ent. Ref. No.	RN104682257		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36820	No. of Violations	2
Docket No.	2008-1796-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Jecha
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>		Subtotal 1	\$2,500
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$125
Notes	Enhancement for one NOV with same or similar violations issued to the Site within the past five years.		
Culpability	No	0.0% Enhancement	Subtotal 4
Notes	The Respondent does not meet the culpability criteria.		
Good Faith Effort to Comply Total Adjustments		Subtotal 5	\$625
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$1	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$410		
<b>SUM OF SUBTOTALS 1-7</b>		Final Subtotal	\$2,000
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		0.0%	Adjustment
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes			
Final Penalty Amount			\$2,000
<b>STATUTORY LIMIT ADJUSTMENT</b>		Final Assessed Penalty	\$2,000
<b>DEFERRAL</b>		20.0% Reduction	Adjustment
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only, e.g. 20 for 20% reduction.)			
Notes	Deferral offered for expedited settlement.		
<b>PAYABLE PENALTY</b>		\$1,600	

**Screening Date** 18-Nov-2008

**Docket No.** 2008-1796-WQ-E

**PCW**

**Respondent** Mira Vista, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 36820

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN104682257

**Media [Statute]** Water Quality

**Enf. Coordinator** Thomas Jecha

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

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

No

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

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

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same or similar violations issued to the Site within the past five years.

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

<b>Screening Date</b> 18-Nov-2008	<b>Docket No.</b> 2008-1796-WQ-E	<b>PCW</b>
<b>Respondent</b> Mira Vista, Inc.		<small>Policy Revision 2 (September 2002)</small>
<b>Case ID No.</b> 36820		<small>PCW Revision October 30, 2008</small>
<b>Reg. Ent. Reference No.</b> RN104682257		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Thomas Jecha		
<b>Violation Number</b> 1		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(a) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15S820 Part III, Section F.2(a)(ii) and 2(c)(i)(B)	
<b>Violation Description</b>	Failed to properly install and maintain storm water structural controls according to the manufacturer's specifications and install storm water structural controls at all down slope boundaries of the construction site to divert flows away from exposed soils and lessen off-site transport of eroded soils. Specifically, some erosion control logs were not properly installed and maintained at 4225 Margaritas Way and erosion control logs were in need of maintenance at the lot adjacent to the west side of 8102 Thompson Parkway. Also, additional storm water structural controls were needed at 4510 Margaritas Way.	
	<b>Base Penalty</b>	\$10,000

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

OR	<b>Harm</b>				
	Release	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	x	<b>Percent</b> <input type="text" value="5%"/>

**>> Programmatic Matrix**

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

**Matrix Notes** Human health or the environment could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<small>mark only one with an x</small>	daily	<input type="checkbox"/>
	weekly	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	x

**Violation Base Penalty**

Three single events are recommended.

**Good Faith Efforts to Comply**  Reduction

		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	x	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="checkbox"/>	(mark with x)	

**Notes** Structural controls were repaired and additional controls installed on October 31, 2008.

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

Estimated EB Amount  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent:** Mira Vista, Inc.  
**Case ID No.:** 36820  
**Reg. Ent. Reference No.:** RN104682257  
**Media:** Water Quality  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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				0.00	\$0	n/a	\$0
Other (as needed)	\$310	23-Oct-2008	31-Oct-2008	0.02	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair and install additional erosion controls. The date required is the investigation date and the final date is the date compliance was achieved.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$310

TOTAL

\$0

<b>Screening Date</b> 18-Nov-2008	<b>Docket No.</b> 2008-1796-WQ-E	<b>PCW</b>	
<b>Respondent</b> Mira Vista, Inc.		<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 36820		<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN104682257			
<b>Media [Statute]</b> Water Quality			
<b>Enf. Coordinator</b> Thomas Jecha			
<b>Violation Number</b> <input type="text" value="2"/>			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(a) and TPDES General Permit No. TXR15S820 Part III, Section F.6(d)		
<b>Violation Description</b>	Failed to remove accumulations of sediment transported from the construction site. Specifically, sediment from the construction site was observed in the street at the intersection of Margaritas Way and Thompson Parkway.		
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Harm</b>		
	Major	Moderate	Minor
	Actual	<input type="text"/>	<input checked="" type="checkbox"/>
	Potential	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="10%"/>
<b>&gt;&gt; Programmatic Matrix</b>			
	Falsification	Major	Moderate
	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Minor	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.		
	<b>Adjustment</b>	<input type="text" value="\$9,000"/>	
			<input type="text" value="\$1,000"/>
<b>Violation Events</b>			
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b>
		<input type="text" value="56"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
	<input type="text" value="\$1,000"/>		
	One quarterly event is recommended from the October 23, 2008 investigation until compliance was achieved on November 5, 2008.		
<b>Good Faith Efforts to Comply</b>			
	<input type="text" value="25.0%"/>	Reduction	<input type="text" value="\$250"/>
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>	
N/A	<input type="text"/>	(mark with x)	
<b>Notes</b>	Sediment was removed from the street on November 5, 2008.		
	<b>Violation Subtotal</b>	<input type="text" value="\$750"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	<input type="text" value="\$0"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$800"/>
	<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$800"/>

## Economic Benefit Worksheet

**Respondent** Mira Vista, Inc.  
**Case ID No.** 36820  
**Reg. Ent. Reference No.** RN104682257  
**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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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				0.00	\$0	n/a	\$0
Other (as needed)	\$100	23-Oct-2008	5-Nov-2008	0.04	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove sediment that discharged from the construction site and accumulated in the street. The date required is the investigation date and the final date is the date compliance was achieved.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$100

TOTAL

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602869893 MIRA VISTA INC	Classification: AVERAGE	Rating: 4.50
Regulated Entity:	RN104682257 MIRA VISTA BELLA VISTA ESTATES	Classification: AVERAGE	Site Rating: 4.5
ID Number(s):	STORMWATER PERMIT		TXR15S820
Location:	INTRSECT FM 707 & THOMPSON PRKWY, ABILENE, TAYLOR CO	Rating Date: 9/1/2008	Repeat Violator: NO
TCEQ Region:	REGION 03 - ABILENE		
Date Compliance History Prepared:	November 10, 2008		
Agency Decision Requiring Compliance	Enforcement		
Compliance Period:	November 10, 2003 to November 10, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Thomas Jecha	Phone:	239 - 2576

## 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 11/09/2006 (518933)

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

Date: 09/26/2006 (511660)

Self Report? NO Classification: Moderate

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

Rqmt Prov: PERMIT TXR15S820

Description: Failure to properly install and maintain structural according to manufacturer's or designer's specifications.

Self Report? NO Classification: Moderate

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

Rqmt Prov: PERMIT TXR15S820

Description: Failure to remove sediment from the streets within the subdivision.

Self Report? NO Classification: Moderate

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

Rqmt Prov: PERMIT TXR15S820

Description: Failure to install structural controls at all down slope boundaries of the construction site to divert flows away from exposed soils, to limit the contact of runoff with disturbed areas, or to lessen off-site transport of eroded soils.

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  
MIRA VISTA, INC.  
RN104682257**

§ **BEFORE THE**  
§  
§ **TEXAS COMMISSION ON**  
§  
§ **ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-1796-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 Mira Vista, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent operates a residential construction site located at the intersection of Farm-to-Market Road 707 and Thompson Parkway in Abilene, Taylor 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 November 10, 2008.
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 Two Thousand Dollars (\$2,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent



has paid One Thousand Six Hundred Dollars (\$1,600) of the administrative penalty and Four Hundred Dollars (\$400) 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 has implemented the following corrective measures at the Site:
  - a. Properly installed and began maintaining erosion control logs at 4225 Margaritas Way and the lot adjacent to the west side of 8102 Thompson Parkway on October 31, 2008;
  - b. Removed sediment from the street at the intersection of Margaritas Way and Thompson Parkway on November 5, 2008; and
  - c. Installed additional erosion control logs at 4510 Margaritas Way on October 31, 2008.
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 an operator of the Site, the Respondent is alleged to have:

1. Failed to properly install and maintain storm water structural controls according to the manufacturer's specifications and install storm water structural controls at all down slope boundaries of the construction site to divert flows away from exposed soils and lessen off-site transport of eroded soils, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15S820, Part III, Section F.2(a)(ii) and 2(c)(i)(B), as documented during an investigation conducted on October 23, 2008. Specifically, some erosion control logs were not properly installed and maintained at 4225 Margaritas Way and erosion



control logs were in need of maintenance at the lot adjacent to the west side of 8102 Thompson Parkway. Also, additional storm water structural controls were needed at 4510 Margaritas Way.

2. Failed to remove accumulations of sediment transported from the construction site, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a) and TPDES General Permit No. TXR15S820, Part III, Section F.6(d), as documented during an investigation conducted on October 23, 2008. Specifically, sediment from the construction site was observed in the street at the intersection of Margaritas Way and Thompson Parkway

### 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: Mira Vista, Inc., Docket No. 2008-1796-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. 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 agreement 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.
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.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*John Sadler*  
For the Executive Director

2/5/2009  
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.

*Daniel Mason*  
Signature

1-5-09  
Date

Daniel Mason  
Name (Printed or typed)  
Authorized Representative of  
Mira Vista, Inc.

member-manager  
Title

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

