

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1672-WQ-E TCEQ ID: RN105360093 CASE NO.: 34904
RESPONDENT NAME: JKD BUILDER, LLC

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 14300 Flat Top Ranch Road, Austin, Travis County</p> <p>TYPE OF OPERATION: Residential construction site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There are no other pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Merrilee Gerberding-Hupp, Waste Enforcement Section, MC 169, (512) 239-4490 TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929 Respondent: Mr. J. Keith Durio, President, JKD Builder, LLC., 17005 Trail of the Woods, Austin, Texas 78734 Respondent's Attorney: Mr. David Groom, Esq., Groom Law Firm, P.C., 2806 Flintrock Trace, Building A-103 Austin, Texas 78738</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 7, 2007</p> <p>Date of NOE Relating to this Case: October 10, 2007</p> <p>Background Facts: The EDRP was filed February 12, 2008. An EDFARP was filed February 25, 2008. The Respondent filed an answer to the EDFARP and the case was referred to SOAH. Settlement was achieved and a signed Agreed Order was received on August 20, 2008.</p> <p>Current Compliance Status: No outstanding Technical Requirements. The Respondent received authorization to discharge storm water under permit no. TXRI51583.</p> <p>WQ:</p> <p>1. Failed to obtain authorization to discharge storm water associated with construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(c)].</p> <p>2: Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$3,600</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$282/\$3,318</p> <p>The Respondent paid \$282 of the administrative penalty. The remaining amount of \$3,318 administrative penalty shall be payable in 14 monthly payments of \$237 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action(s) Taken:</p> <p>The ED recognizes that the Respondent implemented the following corrective measures at the Site:</p> <ol style="list-style-type: none"> On October 15, 2007, Respondent submitted the Notice of Intent to obtain authorization to discharge storm water and implemented a Storm Water Pollution Prevention Plan; and On October 30, 2007, Respondent replaced and reset silt fences, added a rolled grass barrier behind the lower level of erosion control, and seeded the disturbed areas with rye grass.



Penalty Calculation Worksheet (PCW)

DATES	Assigned	1-Nov-2007	Screening	2-Nov-2007	EPA Due	
	PCW	14-Dec-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	JKD Builder, LLC
Reg. Ent. Ref. No.	RN105360093
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34904	No. of Violations	2	
Docket No.	2007-1672-WQ-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Andrew Hunt	
Multi-Media		EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No enhancement is recommended due to Average Performer classification.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	10% Reduction	Subtotal 5	\$400
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: Respondent achieved compliance on October 30, 2007.

Total EB Amounts	\$35	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$3,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,600
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount: \$3,600

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,600
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$3,600
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Screening Date 2-Nov-2007

Docket No. 2007-1672-WQ-E

PCW

Respondent JKD Builder, LLC

Policy Revision 2 (September 2002)

Case ID No. 34904

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105360093

Media [Statute] Water Quality

Enf. Coordinator Andrew Hunt

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%
<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 enhancement is recommended due to Average Performer classification.

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

Screening Date 2-Nov-2007

Docket No. 2007-1672-WQ-E

PCW

Respondent JKD Builder, LLC

Policy Revision 2 (September 2002)

Case ID No. 34904

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105360093

Media [Statute] Water Quality

Enf. Coordinator Andrew Hunt

Violation Number 1

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

Violation Description Failed to obtain authorization to discharge storm water associated with construction activities, as documented during an investigation conducted on August 7, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 Number of violation days 66

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Three monthly events are recommended from investigation date (August 7, 2007) to date of compliance (October 15, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$2,700

This violation Final Assessed Penalty (adjusted for limits) \$2,700

Economic Benefit Worksheet

Respondent JKD Builder, LLC
Case ID No. 34904
Reg. Ent. Reference No. RN105360093
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
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$2,000	7-Aug-2007	15-Oct-2007	0.2	\$19	n/a	\$19
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to develop and implement a Storm Water Pollution Prevention Plan and to submit a Notice of Intent at a construction site, beginning on the date of the investigation, and ending on the 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	\$2,000	TOTAL	\$19
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Screening Date 2-Nov-2007

Docket No. 2007-1672-WQ-E

PCW

Respondent JKD Builder, LLC

Policy Revision 2 (September 2002)

Case ID No. 34904

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105360093

Media [Statute] Water Quality

Enf. Coordinator Andrew Hunt

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.121(a)

Violation Description

Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state, as documented during an investigation on August 7, 2007. Specifically, a four foot deep erosional rill was documented beginning at the first line of silt fencing at the back of the property and continuing underneath the second silt fence. Also, the second and third line of silt fences above the bank of Lake Austin were observed filled with silt sediment. In addition, a trail of sediment from the third silt fence was documented entering into water in the state.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0%

Matrix Notes

Human health and 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 as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

84 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 from date of investigation (08/07/2007) to date of compliance (10/30/2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$16

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

Economic Benefit Worksheet

Respondent JKD Builder, LLC
Case ID No. 34904
Reg. Ent. Reference No. RN105360093
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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	7-Aug-2007	30-Oct-2007	0.2	\$1	\$15	\$16
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly install and maintain silt fence and remove accumulated sediments. Date Required is the investigation date. Final Date is the 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

\$1,000

TOTAL

\$16

Compliance History

Customer/Respondent/Owner-Operator: CN603232547 JKD BUILDER, LLC Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105360093 14300 FLAT TOP RANCH ROAD Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s):
Location: Located at 14300 Flat Top Ranch Road, Austin, Travis
County, TX
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: November 02, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 02, 2002 to November 02, 2007
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Andrew Hunt Phone: 512-239-1203

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. 10/11/2007 (594671)
 - 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
ENFORCEMENT ACTION
CONCERNING
JKD BUILDER, LLC,
RN105360093

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1672-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding JKD Builder, LLC ("JKD") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and JKD, represented by David Groom, Esq. of the GROOM Law Firm, P.C., appear before the Commission and together stipulate that:

1. JKD operates a residential construction site located at 14300 Flat Top Ranch Road in Austin, Travis County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and JKD agree that the Commission has jurisdiction to enter this Agreed Order, and that JKD is subject to the Commission's jurisdiction.
4. JKD received notice of the violations alleged in Section II ("Allegations") on or about October 15, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by JKD of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of three thousand six hundred dollars (\$3,600.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). JKD has paid two hundred eighty-two dollars (\$282.00) of the

administrative penalty. The remaining amount of three thousand three hundred eighteen dollars (\$3,318.00) of the administrative penalty shall be payable in 14 monthly payments of two hundred thirty-seven dollars (\$237.00) each.

The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If JKD fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of JKD to meet the payment schedule of this Agreed Order constitutes the failure by JKD to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and JKD 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 JKD has implemented the following corrective measures at the Site:
 - a. On October 15, 2007, submitted the Notice of Intent to obtain authorization to discharge storm water and implemented a Storm Water Pollution Prevention Plan; and
 - b. On October 30, 2007, replaced and reset silt fences, added a rolled grass barrier behind the lower level of erosion control, and seeded the disturbed areas with rye grass.
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 JKD 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

JKD is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c) by failing to obtain authorization to discharge storm water associated with construction activities, as documented during an investigation conducted on August 7, 2007.
2. TEX. WATER CODE § 26.121(a) by failing to prevent the unauthorized discharge of sediment into or adjacent to water in the state, as documented during an investigation conducted on August 7, 2007.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that JKD pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and JKD'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: JKD Builder, LLC, Docket No. 2007-1672-WQ-E" to:

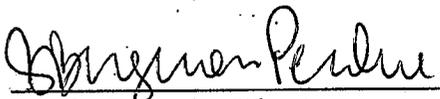
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon JKD. JKD 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 JKD in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to JKD, or three days after the date on which the Commission mails notice of the Order to JKD, 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



For the Executive Director

10/16/08

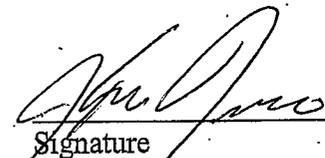
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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



Signature

J Keith Durio

Name (Printed or typed)

Authorized representative of

JKD Builder, LLC

8/20/08
Date

PRESIDENT
Title