

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1658-WQ-E **TCEQ ID:** RN105587042 **CASE NO.:** 36672

RESPONDENT NAME: Barr / Principle Builders, 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: 59 Majestic Way Dominion, Renaissance Unit 4, located in the Dominion on Majestic Way, San Antonio, Bexar 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 is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 30, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. David Barr, President/Member, Barr / Principle Builders, LLC, 136 Morning Light, Spring Branch, Texas 78070 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 10, 2008</p> <p>Date of NOV/NOE Relating to this Case: July 24, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to obtain authorization to discharge storm water associated with construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p>Total Assessed: \$900</p> <p>Total Deferred: \$180 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$720</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 Actions Taken:</p> <p>The Executive Director recognizes that on July 30, 2008, the Respondent obtained authorization to discharge storm water under Texas Pollutant Discharge Elimination System Storm Water Construction General Permit No. TXR15MB61.</p>

Additional ID No(s): TXR15MB61



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	28-Sep-2008	Screening	16-Oct-2008	EPA Due	
	PCW	17-Oct-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Barr / Principle Builders, LLC
Reg. Ent. Ref. No.	RN105587042
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36672	No. of Violations	1
Docket No.	2008-1658-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		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	\$1,000
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment due to Average Performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$100
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$5
 Approx. Cost of Compliance \$2,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$900
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$900
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$900
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DEFERRAL	20.0% Reduction	Adjustment	-\$180
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$720
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Screening Date 16-Oct-2008

Docket No. 2008-1658-WQ-E

PCW

Respondent Barr / Principle Builders, LLC

Policy Revision 2 (September 2002)

Case ID No. 36672

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105587042

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

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 adjustment due to Average Performer classification.

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

Screening Date 16-Oct-2008	Docket No. 2008-1658-WQ-E	PCW
Respondent Barr / Principle Builders, LLC		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 36672		<small>PCW Revision June 12, 2008</small>
Reg. Ent. Reference No. RN105587042		
Media [Statute] Water Quality		
Enf. Coordinator Lanae Foard		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)"/>	
Violation Description	<input type="text" value="Failed to obtain authorization to discharge storm water associated with construction activities, as documented during an investigation conducted on July 10, 2008. Specifically, the investigator observed approximately one-half to one acre of soil disturbance, a house that had already been constructed with the front, back, and side yards still disturbed, and erosion and sediment controls that had been implemented but not maintained."/>	
	Base Penalty	<input type="text" value="\$10,000"/>
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release Major Moderate Minor	
	Actual	<input type="text"/>
	Potential	<input type="text"/>
	Percent	<input type="text" value="0%"/>
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
	<input type="text"/>	<input type="text" value="x"/>
	Percent	<input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>	
	Adjustment	<input type="text" value="\$9,000"/>
		<input type="text" value="\$1,000"/>
Violation Events		
Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="20"/> Number of violation days
<small>mark only one with an x</small>	daily	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>
	Violation Base Penalty	<input type="text" value="\$1,000"/>
	<input type="text" value="One monthly event is recommended from the date of investigation (July 10, 2008) to the date of compliance (July 30, 2008)."/>	
Good Faith Efforts to Comply		
	10.0% Reduction	<input type="text" value="\$100"/>
	<small>Before NOV NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	
Ordinary	<input type="text" value="x"/>	
N/A	<input type="text"/>	<small>(mark with x)</small>
Notes	<input type="text" value="The Respondent achieved compliance on July 30, 2008."/>	
	Violation Subtotal	<input type="text" value="\$900"/>
Economic Benefit (EB) for this violation		
Estimated EB Amount	<input type="text" value="\$5"/>	Statutory Limit Test
		<input type="text" value="\$900"/>
	This violation Final Assessed Penalty (adjusted for limits)	
		<input type="text" value="\$900"/>

Economic Benefit Worksheet

Respondent Barr / Principle Builders, LLC
Case ID No. 36672
Reg. Ent. Reference No. RN105587042
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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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	\$2,000	10-Jul-2008	30-Jul-2008	0.05	\$5	n/a	\$5
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a storm water permit and to develop and implement a storm water pollution prevention plan. Date required is the date of the investigation. Final date is the date of compliance.

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	\$2,000	TOTAL	\$5
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Compliance History Report

Customer/Respondent/Owner-Operator: CN602969271 Barr / Principle Builders, LLC Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105587042 59 MAJESTIC WAY DOMINION Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s): STORMWATER PERMIT TXR15MB61
Location: RENAISSANCE UNIT 4 LOCATED IN THE DOMINION ON MAJESTIC WAY, SAN ANTONIO, BEXAR CO, TX Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: October 13, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 13, 2003 to October 13, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lanae Foard Phone: 239 - 2554

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 09/24/2008 (687710)
 - 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
BARR / PRINCIPLE BUILDERS, LLC
RN105587042

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1658-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 Barr / Principle Builders, LLC ("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 at Renaissance Unit 4, located in the Dominion on Majestic Way in San Antonio, Bexar 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 July 29, 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 Nine Hundred Dollars (\$900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid Seven Hundred Twenty Dollars (\$720) of the administrative penalty and One Hundred Eighty Dollars (\$180) 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 on July 30, 2008, the Respondent obtained authorization to discharge storm water under Texas Pollutant Discharge Elimination System Storm Water Construction General Permit No. TXR15MB61.
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 operator of the Site, the Respondent is alleged to have failed to obtain authorization to discharge storm water associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on July 10, 2008. Specifically, the investigator observed approximately one-half to one acre of soil disturbance, a house that had already been constructed with the front, back, and side yards still disturbed, and erosion and sediment controls that had been implemented but not maintained.

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: Barr / Principle Builders, LLC, Docket No. 2008-1658-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 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), 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 Szdlin
For the Executive Director

2/27/2009
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.

David Barr
Signature

1/15/09
Date

DAVID BARR
Name (Printed or typed)
Authorized Representative of
Barr / Principle Builders, LLC

MEMBER
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.