

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1785-WQ-E **TCEQ ID:** RN105598031 **CASE NO.:** 36802

RESPONDENT NAME: Dale K. Farrow dba Reclamation Contractors of Texas

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: Reclamation Contractors of Texas, 2121 County Road 2436, Cherokee County</p> <p>TYPE OF OPERATION: Industrial mining operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on August 4, 2008, alleging that the Respondent failed to obtain a storm water multi-sector general permit prior to beginning mining operations. There is one additional pending enforcement action regarding this facility location, Docket No. 2008-1759-WR-E.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</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. Audra Benoit, Enforcement Division, Enforcement Team 4, MC R-12, (713) 767-3682; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Dale K. Farrow, Owner, Reclamation Contractors of Texas, P.O. Box 16, New London, Texas 75682 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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: August 4, 2008</p> <p>Date of Investigation Relating to this Case: August 5, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 7, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to obtain authorization to discharge storm water associated with mining activities under a Multi-Sector General Permit [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p>Total Assessed: \$3,600</p> <p>Total Deferred: \$720 <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: \$2,880</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 November 18, 2008, the Respondent submitted the Notice of Intent letter.</p>

Additional ID No(s): TXR05Y026



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

DATES	Assigned	28-Oct-2008	Screening	12-Nov-2008	EPA Due	
	PCW	12-Nov-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Dale K. Farrow dba Reclamation Contractors of Texas
Reg. Ent. Ref. No.	RN105598031
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36802	No. of Violations	1
Docket No.	2008-1785-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Audra Benoit
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section	
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 \$4,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
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 \$400
Economic Benefit	0.0% Enhancement* Subtotal 6 \$0
Total EB Amounts	\$12
Approx. Cost of Compliance	\$600
<small>*Capped at the Total EB \$ Amount</small>	
SUM OF SUBTOTALS 1-7	Final Subtotal \$3,600
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment \$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>	
Notes	
	Final Penalty Amount \$3,600
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty \$3,600
DEFERRAL	20.0% Reduction Adjustment -\$720
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
Notes	Deferral offered for expedited settlement.
PAYABLE PENALTY	\$2,880

Screening Date 12-Nov-2008

Docket No. 2008-1785-WQ-E

PCW

Respondent Dale K. Farrow dba Reclamation Contractors of Texas

Policy Revision 2 (September 2002)

Case ID No. 36802

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105598031

Media [Statute] Water Quality

Enf. Coordinator Audra Benoit

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 judgments 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 12-Nov-2008	Docket No. 2008-1785-WQ-E	PCW		
Respondent Dale K. Farrow dba Reclamation Contractors of Texas	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36802	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN105598031				
Media [Statute] Water Quality				
Enf. Coordinator Audra Benoit				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	<input style="width:100%;" type="text" value="30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)"/>			
Violation Description	<input style="width:100%;" type="text" value="Failed to obtain authorization to discharge storm water associated with mining activities under a Multi-Sector General Permit."/>			
Base Penalty		<input style="width:100%;" type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Release	Harm		
		Major Moderate Minor		
	Actual	<input style="width:50px; height:15px;" type="text"/>	Percent <input style="width:50px;" type="text" value="0%"/>	
	Potential	<input style="width:50px; height:15px;" type="text"/>		
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input style="width:50px; height:15px;" type="text"/>	x	<input style="width:50px; height:15px;" type="text"/>	<input style="width:50px; height:15px;" type="text"/>
	Percent <input style="width:50px;" type="text" value="10%"/>			
Matrix Notes	<input style="width:100%; height:30px;" type="text" value="100% of the rule requirement was not met."/>			
Adjustment		<input style="width:100%;" type="text" value="\$9,000"/>		
		<input style="width:100%;" type="text" value="\$1,000"/>		
Violation Events				
Number of Violation Events <input style="width:50px;" type="text" value="4"/>		<input style="width:50px;" type="text" value="100"/> Number of violation days		
<i>mark only one with an x</i>	daily	<input style="width:50px; height:15px;" type="text"/>	Violation Base Penalty <input style="width:100%;" type="text" value="\$4,000"/>	
	weekly	<input style="width:50px; height:15px;" type="text"/>		
	monthly	x		
	quarterly	<input style="width:50px; height:15px;" type="text"/>		
	semiannual	<input style="width:50px; height:15px;" type="text"/>		
	annual	<input style="width:50px; height:15px;" type="text"/>		
	single event	<input style="width:50px; height:15px;" type="text"/>		
<input style="width:100%; height:30px;" type="text" value="Four monthly events are recommended from the investigation date of August 5, 2008 to the screening date of November 12, 2008."/>				
Good Faith Efforts to Comply		<input style="width:50px;" type="text" value="10.0%"/> Reduction	<input style="width:100%;" type="text" value="\$400"/>	
		Before NOV NOV to EDPRP/Settlement Offer		
Extraordinary	<input style="width:50px; height:15px;" type="text"/>	<input style="width:50px; height:15px;" type="text"/>		
Ordinary	<input style="width:50px; height:15px;" type="text"/>	x		
N/A	<input style="width:50px; height:15px;" type="text"/>	(mark with x)		
Notes	<input style="width:100%; height:30px;" type="text" value="The Respondent came into compliance on November 18, 2008."/>			
Violation Subtotal		<input style="width:100%;" type="text" value="\$3,600"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input style="width:100%;" type="text" value="\$12"/>		Violation Final Penalty Total <input style="width:100%;" type="text" value="\$3,600"/>		
		This violation Final Assessed Penalty (adjusted for limits) <input style="width:100%;" type="text" value="\$3,600"/>		

Economic Benefit Worksheet

Respondent Dale K. Farrow dba Reclamation Contractors of Texas
Case ID No. 36802
Reg. Ent. Reference No. RN105598031
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	\$500	5-Aug-2008	18-Nov-2008	0.29	\$0	\$10	\$10
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	\$100	5-Aug-2008	18-Nov-2008	0.29	\$1	n/a	\$1
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 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				0.00	\$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	\$600	TOTAL	\$12
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Compliance History

Customer/Respondent/Owner-Operator:	CN603407420	Dale K. Farrow	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105598031	RECLAMATION CONTRACTORS OF TEXAS	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	STORMWATER	PERMIT		TXR05Y026
Location:	2121 CR 2436, CHEROKEE COUNTY, TX			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	November 24, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 07, 2003 to November 07, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Audra Benoit		Phone:	(713) 767-3682

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.)
10/23/2008 (689196)
 - 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
DALE K. FARROW DBA
RECLAMATION CONTRACTORS OF
TEXAS
RN105598031

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§
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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1785-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 Dale K. Farrow dba Reclamation Contractors of Texas ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, appear before the Commission and together stipulate that:

1. The Respondent owns and operates an industrial mining operation at 2121 County Road 2436 in Cherokee 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 August 12, 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 Three Thousand Six Hundred Dollars (\$3,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Eight Hundred Eighty Dollars (\$2,880) of the administrative penalty and Seven Hundred Twenty Dollars (\$720) 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 November 18, 2008, the Respondent submitted the Notice of Intent letter.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain authorization to discharge storm water associated with mining activities under a Multi-Sector General Permit, 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 August 5, 2008.

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: Dale K. Farrow dba Reclamation Contractors of Texas, Docket No. 2008-1785-WQ-E" to:

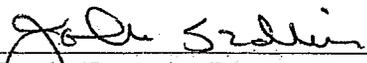
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

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



For the Executive Director

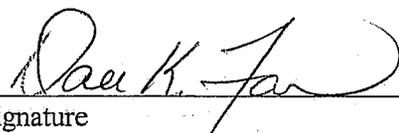
Date 3/9/2009

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.



Signature

Date 1-15-09

DALE K. FARRON

Name (Printed or typed)
Authorized Representative of
Dale K. Farrow dba Reclamation Contractors of Texas

Title OWNER

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.