

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0212-MLM-E **TCEQ ID:** RN105674766 **CASE NO.:** 37153

RESPONDENT NAME: DJL Ventures, Inc. and Bulverde-Spring Branch EMS

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 checked="" 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 checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Bulverde Spring Branch EMS, north of Bulverde on the east side of United States Highway 281, approximately two miles north of State Highway 46, Comal County</p> <p>TYPE OF OPERATION: 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 Respondents have expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 18, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Thomas A. Hackleman, Building and Development Manager, DJL Ventures, Inc., 8122 Datapoint Drive, Suite 1000, San Antonio, Texas 78229 Ms. Mechelle Salmon, Executive Director, Bulverde-Spring Branch EMS, P.O. Box 38, 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: January 9, 2009</p> <p>Date of NOV/NOE Relating to this Case: January 26, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to obtain authorization to discharge storm water associated with construction activities. Specifically, construction activities, including clearing and grading, disturbed approximately 3.32 acres of land [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p> <p>2) Failure to obtain approval of an Edwards Aquifer Contributing Zone Plan ("EACZP") prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, approximately 3.32 acres of land were disturbed [30 TEX. ADMIN. CODE § 213.23(a)(1)].</p>	<p>Total Assessed: \$1,900</p> <p>Total Deferred: \$380 <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: \$1,520</p> <p>CN603440421 and CN603438862</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input 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 the Respondents submitted:</p> <p>a. A Notice of Intent to discharge storm water on January 29, 2009; and</p> <p>b. An EACZP on February 5, 2009.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondents to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease any regulated activity at the Site until such time that an EACZP has been reviewed and approved by the TCEQ San Antonio Regional Office;</p> <p>b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the EACZP that was submitted on February 5, 2009, within 30 days after the date of such request or by any other deadline specified in writing; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

Additional ID No(s): Edwards Aquifer Reg. 13-09010902A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	2-Feb-2009			
	PCW	12-Feb-2009	Screening	11-Feb-2009	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	DJL Ventures, Inc. and Bulverde-Spring Branch EMS
Reg. Ent. Ref. No.	RN105674766
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37153	No. of Violations	2
Docket No.	2009-0212-MLM-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Thomas Jecha
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$4,000
---	-------------------	----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$0
---------------------------	------------------	--------------------------------	------------

Notes: An enhancement is not recommended because of no previous compliance history.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
--------------------	----	------------------	-------------------	------------

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$200
--	-------------------	--------------

Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
-------------------------	-------------------	-------------------	------------

Total EB Amounts: \$322
 Approx. Cost of Compliance: \$8,600
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$3,800
-----------------------------	-----------------------	----------------

OTHER FACTORS AS JUSTICE MAY REQUIRE	-50.0%	<i>Adjustment</i>	-\$1,900
---	--------	-------------------	-----------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Reduction recommended for self-reporting the violations on December 12, 2008.

<i>Final Penalty Amount</i>	\$1,900
-----------------------------	----------------

STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$1,900
-----------------------------------	-------------------------------	----------------

DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$380
-----------------	-----------------	-------------------	---------------

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	\$1,520
------------------------	----------------

Screening Date 11-Feb-2009	Docket No. 2009-0212-MLM-E	PCW
Respondent DJL Ventures, Inc. and Bulverde-Spring Branch EMS	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 37153	<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN105674766		
Media [Statute] Edwards Aquifer		
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 <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%

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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

An enhancement is not recommended because of no previous compliance history.

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

Screening Date 11-Feb-2009	Docket No. 2009-0212-MLM-E	PCW
Respondent DJL Ventures, Inc. and Bulverde-Spring Branch EMS		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 37153		<small>PCW Revision October 30, 2008</small>
Reg. Ent. Reference No. RN105674766		
Media [Statute] Edwards Aquifer		
Enf. Coordinator Thomas Jecha		
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. Specifically, construction activity, including clearing and grading, disturbed approximately 3.32 acres of land."/>	
Base Penalty	<input type="text" value="\$10,000"/>	

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>		<input type="text"/>
				Percent <input type="text" value="0%"/>	

>> Programmatic Matrix

Falsification				
	Major	Moderate	Minor	
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events **Number of violation days**

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input checked="" type="checkbox"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

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

Notes

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: DJL Ventures, Inc. and Bulverde-Spring Branch EMS
Case ID No.: 37153
Reg. Ent. Reference No.: RN105674766
Media: Edwards Aquifer
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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,000	18-Dec-2008	29-Jan-2009	0.12	\$1	\$15	\$16
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	18-Dec-2008	29-Jan-2009	0.12	\$1	n/a	\$1
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain authorization to discharge storm water. The date required is the self-reporting date and the final date is the date the NOI was submitted.

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

\$2,100

TOTAL

\$17

Screening Date 11-Feb-2009	Docket No. 2009-0212-MLM-E	PCW		
Respondent DJL Ventures, Inc. and Bulverde-Spring Branch EMS	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 37153	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN105674766				
Media [Statute] Edwards Aquifer				
Enf. Coordinator Thomas Jecha				
Violation Number <input type="text" value="2"/>				
Rule Cite(s)	30 Tex. Admin. Code § 213.23(a)(1)			
Violation Description	Failed to obtain approval of an Edwards Aquifer Contributing Zone Plan ("EACZP") prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, approximately 3.32 acres of land were disturbed.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	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="2"/>	Number of violation days	
		<input type="text" value="55"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
		Violation Base Penalty	<input type="text" value="\$2,000"/>	
Two monthly events are recommended from the December 18, 2008 self-reporting date until screening on February 11, 2009.				
Good Faith Efforts to Comply		<input type="text" value="0.0%"/>	Reduction	
		<input type="text" value="\$0"/>		
	Extraordinary	Before NOV	NOV to EDRP/Settlement Offer	
	Ordinary	<input type="text"/>	<input type="text"/>	
	N/A	<input checked="" type="checkbox"/>	(mark with x)	
Notes	The Respondents do not meet the good faith criteria for this violation.			
		Violation Subtotal	<input type="text" value="\$2,000"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$305"/>	Violation Final Penalty Total	
		<input type="text" value="\$1,000"/>		
		This violation Final Assessed Penalty (adjusted for limits)		
		<input type="text" value="\$1,000"/>		

Economic Benefit Worksheet

Respondent DJL Ventures, Inc. and Bulverde-Spring Branch EMS
Case ID No. 37153
Reg. Ent. Reference No. RN105674766
Media Edwards Aquifer
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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,500	18-Dec-2008	11-Oct-2009	0.81	\$7	\$136	\$142
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	\$4,000	18-Dec-2008	11-Oct-2009	0.81	\$163	n/a	\$163
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare, submit, and implement a EACZP for approval. The date required is the date the violation was self-reported and the final date is the expected 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

\$6,500

TOTAL

\$305

Compliance History Report

Customer/Respondent/Owner-Operator: CN603440421 BULVERDE-SPRING BRANCH EMS Classification: Rating:
Regulated Entity: RN105674766 BULVERDE SPRING BRANCH EMS Classification: Site Rating:
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-09010902A
Location: N OF BULVERDE ON E SIDE HWY 281 APPROX 2 MI N OF
ST HWY 46, COMAL CO
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: February 18, 2009
Agency Decision Requiring Compliance Enforcement
Compliance Period: February 09, 2004 to February 09, 2009
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? 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
- 6

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.)
N/A
 - 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

Compliance History Report

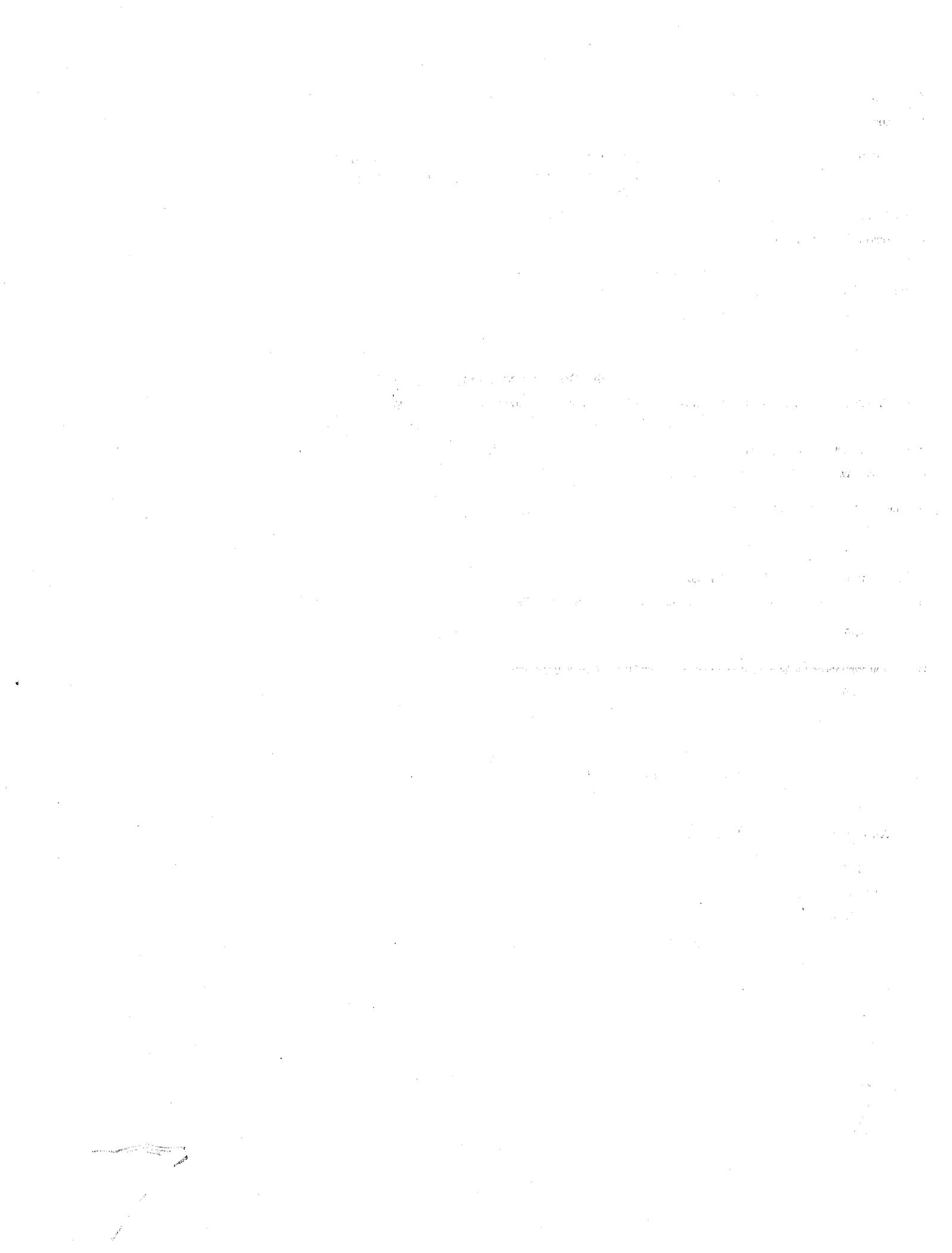
Customer/Respondent/Owner-Operator: CN603438862 DJL Ventures, Inc. Classification: Rating:
Regulated Entity: RN105674766 BULVERDE SPRING BRANCH EMS Classification: Site Rating:
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-09010902A
Location: N OF BULVERDE ON E SIDE HWY 281 APPROX 2 MI N OF
ST HWY 46, COMAL CO
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: April 14, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 06, 2004 to February 06, 2009
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? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

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.)
N/A
 - 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
DJL VENTURES, INC. AND
BULVERDE-SPRING BRANCH EMS
RN105674766

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0212-MLM-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 DJL Ventures, Inc. and Bulverde-Spring Branch EMS ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own a construction site north of Bulverde on the east side of United States Highway 281 approximately two miles north of State Highway 46 in Comal County, Texas (the "Site").
2. The Respondents have 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 Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about January 31, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Nine Hundred Dollars (\$1,900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Thousand Five Hundred Twenty Dollars (\$1,520) of the administrative penalty and Three Hundred Eighty Dollars (\$380) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents 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 Respondents 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 Respondents submitted:
 - a. A Notice of Intent ("NOI") to discharge storm water on January 29, 2009; and
 - b. An Edwards Aquifer Contributing Zone Plan ("EACZP") on February 5, 2009.
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 Respondents have 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 owners of the Site, the Respondents are alleged to have:

1. 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 January 9, 2009. Specifically, construction activities, including clearing and grading, disturbed approximately 3.32 acres of land.
2. Failed to obtain approval of an EACZP prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.23(a)(1), as documented during an investigation conducted on January 9, 2009. Specifically, approximately 3.32 acres of land were disturbed.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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: DJL Ventures, Inc. and Bulverde-Spring Branch EMS, Docket No. 2009-0212-MLM-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 Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease any regulated activity at the Site until such time that an EACZP has been reviewed and approved by the TCEQ San Antonio Regional Office;
 - b. Respond completely and adequately as determined by the TCEQ, to all requests for information concerning the EACZP that was submitted on February 5, 2009, within 30 days after the date of such request or by any other deadline specified in writing; and
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Edwards Aquifer Section, Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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.
5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
8. This Agreed Order 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 under this Agreed Order.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, 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

Jo A. Srdler
For the Executive Director

4/17/2009
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.

M Salmon
Signature

3/18/2009
Date

Mechelle Salmon
Name (Printed or typed)
Authorized Representative of
Bulverde-Spring Branch EMS

EXECUTIVE DIRECTOR
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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sredler

For the Executive Director

4/17/2009
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.

Thomas A. Hackleman

Signature

4-2-09
Date

Thomas A. Hackleman
Name (Printed or typed)
Authorized Representative of
DJL Ventures, Inc.

Building and Development
Title
Manager

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.