

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0583-EAQ-E TCEQ ID: RN105468375 CASE NO.: 35646
RESPONDENT NAME: B & M MARSHALL ROAD, LTD.

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 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

SITE WHERE VIOLATION(S) OCCURRED: Southeast corner of United States Highway 281 North and Marshall Road, San Antonio, Bexar County

TYPE OF OPERATION: Commercial development property

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired July 13, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Lauren Smitherman, Water Enforcement Section, MC 169, (512) 239-5223

TCEQ Regional Contact: Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050

Respondent: Mr. Mark Mays, Vice-President, B & M Marshall Road, Ltd., 335 East Sonterra Boulevard, Suite 200, San Antonio, Texas, 78258

Respondent's Attorney: Mr. Patrick W. Christensen, Brown & Ortiz, P.C., 112 Pecan Street, Suite 1360, San Antonio, Texas 78205

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: January 18, 2008</p> <p>Date of NOE Relating to this Case: March 3, 2008</p> <p>Background Facts: The EDPRP was filed on August 27, 2008. The Respondent filed an answer and the case was referred to SOAH. The Respondent signed the Agreed Order on May 1, 2009.</p> <p>Current Compliance Status: The Respondent submitted a Water Pollution Abatement Plan ("WPAP") to the TCEQ on April 4, 2008, which was approved on June 23, 2008.</p> <p>EAQ: Failed to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$25,000</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 to General Revenue: \$25,000</p> <p>The Respondent paid the administrative penalty in full.</p> <p>Site Compliance History Classification None</p> <p>Person Compliance History Classification None</p> <p>*The Respondent has no compliance history ratings because the CN/RN were not in existence prior to September 1, 2007.</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The ED recognizes that B & M submitted a WPAP to the TCEQ on April 4, 2008, which was approved by the TCEQ on June 23, 2008.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	11-Mar-2008			
	PCW	28-Jan-2009	Screening	27-Mar-2008	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	B&M Marshall Road, Ltd.				
Reg. Ent. Ref. No.	RN105468375				
Facility/Site Region	13-San Antonio	Major/Minor Source	Major		

CASE INFORMATION					
Enf./Case ID No.	35646	No. of Violations	1		
Docket No.	2008-0583-EAQ-E	Order Type	1660		
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Lauren Smitherman		
		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	\$25,000
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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 change due to no previous compliance history.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$140
 Approx. Cost of Compliance: \$4,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$25,000
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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 **\$25,000**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$25,000
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DEFERRAL	0.0% 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	\$25,000
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Screening Date 27-Mar-2008

Docket No. 2008-0583-EAQ-E

PCW

Respondent B&M Marshall Road, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 35646

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105468375

Media [Statute] Edwards Aquifer

Enf. Coordinator Lauren Smitherman

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)**

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 no previous compliance history.

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

Screening Date 27-Mar-2008	Docket No. 2008-0583-EAQ-E	PCW	
Respondent B&M Marshall Road, Ltd.		<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35646		<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN105468375			
Media [Statute] Edwards Aquifer			
Enf. Coordinator Lauren Smitherman			
Violation Number <input type="text" value="1"/>			
Rule Cite(s)	30 Tex. Admin. Code § 213.4(a)(1)		
Violation Description	Failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on January 18, 2008. Specifically, the investigator observed clearing of vegetation and disturbance of soil on a combined area of approximately 22.67 acres.		
	Base Penalty	<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
OR	Release	Harm	
		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
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Percent	<input type="text" value="25%"/>
Matrix Notes	100% of the permit requirement was not met.		
	Adjustment	<input type="text" value="\$7,500"/>	
		<input type="text" value="\$2,500"/>	
Violation Events			
	Number of Violation Events	<input type="text" value="10"/>	Number of violation days
		<input type="text" value="69"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty
	weekly	<input checked="" type="checkbox"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
	<input type="text" value="\$25,000"/>		
Ten weekly events are recommended based on the investigation date (January 18, 2008) through the screening date (March 27, 2008).			
Good Faith Efforts to Comply			
	<input type="text" value="0.0%"/>	Reduction	<input type="text" value="\$0"/>
	Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="checkbox"/>	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.		
	Violation Subtotal	<input type="text" value="\$25,000"/>	
Economic Benefit (EB) for this violation			
	Estimated EB Amount	<input type="text" value="\$140"/>	Violation Final Penalty Total
			<input type="text" value="\$25,000"/>
	This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$25,000"/>

Economic Benefit Worksheet

Respondent B&M Marshall Road, Ltd.

Case ID No. 35646

Reg. Ent. Reference No. RN105468375

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
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No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$4,000	18-Jan-2008	30-Sep-2008	0.70	\$140	n/a	\$140
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost reflects the amount to prepare and submit a WPAP. The date required is the investigation date and the final date is the anticipated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,000

TOTAL

\$140

Compliance History

Customer/Respondent/Owner-Operator: CN603285453 B&M Marshall Road, Ltd. Classification: Rating:
Regulated Entity: RN105468375 VILLAGE AT MARSHALL ROAD Classification: Site Rating:
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-08011803
Location: SE CORNER OF US 281 N AND MARSHALL RD, BEXAR
CO, TX
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: April 01, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 01, 2003 to April 01, 2008

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Lauren Smitherman Phone: 512-239-5223

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 03/06/2008 (618341)
 - 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
B & M MARSHALL ROAD, LTD.,
RN105468375**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0583-EAQ-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 B & M Marshall Road, Ltd. ("B & M") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and B & M, represented by Patrick W. Christensen of the law firm of Brown & Ortiz, P.C., appear before the Commission and together stipulate that:

1. B & M owns and operates a commercial development property located at the southeast corner of United States Highway 281 North and Marshall Road, San Antonio, Bexar 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 B & M agree that the Commission has jurisdiction to enter this Agreed Order, and that B & M is subject to the Commission's jurisdiction.
4. B & M received notice of the violations alleged in Section II ("Allegations") on or about March 8, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by B & M of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of twenty-five thousand dollars (\$25,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). B & M has paid twenty-five thousand dollars (\$25,000.00) of the administrative 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 B & M 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 B & M submitted a Water Pollution Abatement Plan ("WPAP") to the TCEQ on April 4, 2008, in response to this enforcement action, which was approved by the TCEQ on June 23, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that B & M 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

During an investigation conducted on January 18, 2008, a TCEQ San Antonio Regional Office investigator documented that B & M violated 30 TEX. ADMIN. CODE § 213.4(a)(1) by failing to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed clearing of vegetation and disturbance of soil on a combined area of approximately 22.67 acres.

III. DENIALS

B & M generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that B & M pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and B & M'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: B & M Marshall Road, Ltd., Docket No. 2008-0583-EAQ-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 B & M. B & M 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 B & M 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 B & M, or three days after the date on which the Commission mails notice of the Order to B & M, 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

Jobberger Perdue

For the Executive Director

6/17/2009

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 B & M's compliance history;
- Greater scrutiny of any permit applications submitted by B & M;
- 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 B & M;
- Automatic referral to the Attorney General's Office of any future enforcement actions against B & M; and
- TCEQ seeking other relief as authorized by law.

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

Paul R. Mays

Signature

5/1/09

Date

Mark Mays

Name (Printed or typed)

Authorized representative of
B & M Marshall Road, Ltd.

Vice President

Title