

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0106-MLM-E TCEQ ID: RN105490171 CASE NO.: 37041
RESPONDENT NAME: PHYLLIS MOORE

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 checked="" type="checkbox"/> AIR	<input checked="" 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: 700 Oak Grove Loop, China Spring, McLennan County

TYPE OF OPERATION: Land development and construction site

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: A complaint was received by the TCEQ Waco Regional Office. The complaint stated that a property owner was bringing in fill material and contouring the land so a RV Park could be constructed at the site. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired September 7, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney: Ms. Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator: Ms. Lanae Foard, Water Enforcement Section, MC 224, (512) 239-2554
- TCEQ Regional Contact: Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001
- Respondent: Ms. Phyllis Moore, 265 County Road 359, China Spring, Texas 76633
- Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: March 18, 2008</p> <p>Date of Investigation Relating to this Case: December 2, 2008</p> <p>Date of NOE Relating to this Case: December 16, 2008</p> <p>Background Facts: The EDPRP was filed May 14, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MLM:</p> <ol style="list-style-type: none"> Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)]. Failed to obtain authorization to discharge storm water associated with construction activity [30 TEX. ADMIN. CODE § 281.25 (a)(4) and 40 C.F.R. § 122.26(c)]. Failed to comply with the general prohibition on outdoor burning and to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$4,792</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 Due to General Revenue: \$4,792</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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>Ordering Provisions: The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Cease all unauthorized burning of waste at the Site; and Cease disposing of any additional waste at the Site. Within 30 days: <ol style="list-style-type: none"> Develop and implement a storm water pollution prevention plan and post a construction site notice to comply with the Construction General Permit requirements; or Submit compliance documentation that indicates that the construction activity has been completed and that the Site has been re-vegetated to a least 70 percent; and Remove all municipal solid waste at the Site and properly dispose of it at an authorized facility. Within 45 days, submit written certification and include supporting documentation to demonstrate compliance with Ordering Provisions Nos. 1.a. through 2.c.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES

Assigned 5-Jan-2009

PCW 28-Apr-2009

Screening 14-Jan-2009

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Phyllis Moore
 Reg. Ent. Ref. No. RN105490171
 Facility/Site Region 9-Waco Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 37041 No. of Violations 3
 Docket No. 2009-0106-MLM-E Order Type 1660
 Media Program(s) Water Quality Government/Non-Profit No
 Multi-Media Air 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 \$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 5.0% Enhancement Subtotals 2, 3, & 7 \$200

Notes An enhancement is recommended due to one NOV with same/similar violations.

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 \$0

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$932
 Approx. Cost of Compliance \$4,684
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$4,200

OTHER FACTORS AS JUSTICE MAY REQUIRE

14.1%

Adjustment \$592

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Enhancement recommended for the recovery of avoided cost of compliance.

Final Penalty Amount \$4,792

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$4,792

DEFERRAL

0.0%

Reduction

Adjustment \$0

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

\$4,792

Screening Date 14-Jan-2009

Docket No. 2009-0106-MLM-E

PCW

Respondent Phyllis Moore

Policy Revision 2 (September 2002)

Case ID No. 37041

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105490171

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 (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
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) 5%

>> 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

An enhancement is recommended due to one NOV with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 14-Jan-2009

Docket No. 2009-0106-MLM-E

PCW

Respondent Phyllis Moore

Policy Revision 2 (September 2002)

Case ID No. 37041

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105490171

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number

Rule Cite(s)

Tex. Water Code § 26.121(a)

Violation Description

Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state. Specifically, during the December 2, 2008 record review, the investigator documented that the Respondent did not utilize any structural controls for the downslope boundaries of the construction area, resulting in sediment discharging off-site and into an unnamed tributary of the Brazos River.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty

One single event is recommended based on documentation of the violation during the December 2, 2008 record review.

Good Faith Efforts to Comply

0.0% Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
	Extraordinary	
Ordinary		
N/A	X	(mark with X)

Notes

The Respondent does not meet the good faith criteria for this violation.

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 Phyllis Moore
 Case ID No. 37041
 Reg. Ent. Reference No. RN105490171
 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	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal	\$1,500	31-Mar-2008	20-Aug-2009	1.39	\$104	\$0	\$104
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for DELAYED costs

Estimated costs for labor and materials associated with erosion and sediment controls and cleanup activities. The Date Required is the date the discharge was initially documented, 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

\$1,500

TOTAL

\$104

Screening Date 14-Jan-2009

Docket No. 2009-0106-MLM-E

PCW

Respondent Phyllis Moore

Policy Revision 2 (September 2002)

Case ID No. 37041

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105490171

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

		Harm				
Falsification		Major	Moderate	Minor		
Matrix Notes		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent	<input type="text" value="10%"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="text" value="100% of the rule requirement was not met."/>						
					Adjustment	<input type="text" value="\$9,000"/>

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

Reduction
Before NOV NOV to EDPRP/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

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 Phyllis Moore
 Case ID No. 37041
 Reg. Ent. Reference No. RN105490171
 Media Water Quality
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$2,000	31-Mar-2008	20-Aug-2009	1.39	\$9	\$185	\$194
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for DELAYED costs: Estimated costs to implement a storm water pollution prevention plan and prepare and post a site notice. The date required is the date of the initial investigation. 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	\$2,000	TOTAL	\$194
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Screening Date 14-Jan-2009

Docket No. 2009-0106-MLM-E

PCW

Respondent Phyllis Moore

Policy Revision 7, 5-September-2008

Case ID No. 37041

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105490171

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 111.201 and 330.15(c) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the general prohibition on outdoor burning and to prevent the unauthorized disposal of municipal solid waste, as documented during a record review conducted on December 2, 2008. Specifically, the Respondent allowed the unauthorized burning of construction debris, PVC pipe, cans of pipe joint glue, fiber cement plank, and assorted metals.

Base Penalty \$10,000

>> Environmental Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			x	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	x	

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the December 2, 2008 record review.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$633

Violation Final Penalty Total \$1,198

This violation Final Assessed Penalty (adjusted for limits) \$1,198

Economic Benefit Worksheet

Respondent Phyllis Moore
 Case ID No. 37041
 Reg. Ent. Reference No. RN105490171
 Media Water Quality
 Violation No. 3

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				0.00	\$0	\$0	\$0
Land				0.00	\$0	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal	\$592	31-Mar-2008	20-Aug-2009	1.39	\$41	\$0	\$41
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for DELAYED costs: Estimated cost to remove all remains in the unauthorized burning area and dispose of the waste at an authorized facility. The date required is the date of the initial investigation. The final date is the anticipated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$592	31-Mar-2008	31-Mar-2008	0.00	\$0	\$592	\$592
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs: Estimated avoided costs associated with the disposal of approximately five cubic yards of waste by unauthorized burning. The date required is the date of the initial investigation. The final date is the violation end date.

Approx. Cost of Compliance TOTAL

\$1,184		\$633
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Compliance History Report

Customer/Respondent/Owner-Operator:	CN603340530	MOORE, PHYLLIS	Classification: AVERAGE	Rating: 12.00
Regulated Entity:	RN105490171	700 OAK GROVE LOOP	Classification: AVERAGE	Site Rating: 12.00
ID Number(s):				
Location:	700 OAK GROVE LOOP, CHINA SPRING, MCLENNAN COUNTY, TEXAS			
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	January 12, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 12, 2004 to January 12, 2009			
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 |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO | |

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	09/10/2008	(689080)
2	12/17/2008	(704642)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	04/24/2008	(640971)			
Self Report?	NO		Classification:	Moderate	
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)				
CGP; Part II; Section D(2)(b&c) PERMIT					
Description:	Failure to post a completed construction site notice.				
Self Report?	NO		Classification:	Moderate	
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)				
CGP; Part II; Section D(2)(a) PERMIT					
Description:	Failure to develop and implement a storm water pollution prevention plan (SWP3) according to the provisions of the Construction General Permit (CGP) for Storm Water.				
Self Report?	NO		Classification:	Moderate	
Citation:	30 TAC Chapter 111, SubChapter B 111.201				
Description:	Failure to comply with the outdoor burning rules of Texas pursuant to 30 Texas Administrative Code §111.201.				
Self Report?	NO		Classification:	Moderate	
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)(3)				
Description:	Failure to prevent an unauthorized discharge of a pollutant into or adjacent to waters of the state.				
- 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
PHYLLIS MOORE,
RN105490171

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER DOCKET NO. 2009-0106-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE chs. 361 and 382, 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") pt. 122, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Phyllis Moore ("Ms. Moore").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Ms. Moore owns and operates a land development and construction site located at 700 Oak Grove Loop in China Spring, McLennan County, Texas (the "Site").
2. The Site has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code. Additionally, the Site involves the management and the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. Also, the Site consists of one or more sources as defined in TEX. HEALTH AND SAFETY CODE § 382.003(12).
3. During an investigation conducted on December 2, 2008, a TCEQ Waco Regional Office investigator documented that Ms. Moore:
 - a. Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state. Specifically, Ms. Moore did not utilize any structural controls for the downslope boundaries of the construction area, resulting in sediment discharging off-site and into an unnamed tributary of the Brazos River;

- b. Failed to obtain authorization to discharge storm water associated with construction activity. Specifically, Ms. Moore began construction on the Site prior to preparing and implementing a storm water pollution prevention plan and posting a construction site notice; and
 - c. Failed to comply with the general prohibition on outdoor burning and to prevent the unauthorized disposal of municipal solid waste. Specifically, the Ms. Moore allowed the unauthorized burning of construction debris, PVC pipe, cans of pipe joint glue, fiber cement plank, and assorted metals.
4. Ms. Moore received notice of the violations on or about December 21, 2008.
 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Phyllis Moore" (the "EDPRP") in the TCEQ Chief Clerk's office on May 14, 2009.
 6. By letter dated May 14, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Moore with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Ms. Moore received notice of the EDPRP.
 7. More than 20 days have elapsed since Ms. Moore received notice of the EDPRP provided by the Executive Director. Ms. Moore failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Ms. Moore is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE chs. 361 and 382, 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") pt. 122 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Ms. Moore failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a).

3. As evidenced by Finding of Fact No. 3.b., Ms. Moore failed to obtain authorization to discharge storm water associated with construction activity, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c).
4. As evidenced by Finding of Fact No. 3.c., Ms. Moore failed to comply with the general prohibition on outdoor burning and to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(c) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Ms. Moore with proper notice of the EDRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 7, Ms. Moore failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Ms. Moore and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ms. Moore for violations of the Texas Water Code and the Texas Health and Safety Code, within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of four thousand seven hundred ninety-two dollars (\$4,792.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Ms. Moore is assessed an administrative penalty in the amount of four thousand seven hundred ninety-two dollars (\$4,792.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Ms. Moore's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective

actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Phyllis Moore; Docket No. 2009-0106-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. Ms. Moore shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Ms. Moore shall;
 - i. cease all unauthorized burning of waste at the Site; and
 - ii. cease disposing of any additional waste at the Site.
 - b. Within 30 days after the effective date of this Order, Ms. Moore shall:
 - i. develop and implement a storm water pollution prevention plan and post a construction site notice to comply with the Construction General Permit requirements, in accordance with 30 TEX. ADMIN CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c); or
 - ii. submit compliance documentation that indicates that the construction activity has been completed and that the Site has been re-vegetated to at least 70 percent.
 - iii. Within 30 days after the effective date of this Order, Ms. Moore shall remove all municipal solid waste at the Site and properly dispose of it at an authorized facility.
 - c. Within 45 days after the effective date of this Order, Ms. Moore shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b.iii. 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."

Ms. Moore shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Frank Burlison, Water Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue., Ste. 2500 Regional Office
Waco, Texas 76710-7826

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. Moore. Ms. Moore is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Ms. Moore fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Ms. Moore's failure to comply is not a violation of this Order. Ms. Moore shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Moore shall notify the Executive Director within seven days after Ms. Moore becomes 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Ms. Moore shall be made in writing to the Executive Director. Extensions are not effective until Ms. Moore receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Ms. Moore if the Executive Director determines that Ms. Moore has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Phyllis Moore
Docket No. 2009-0106-MLM-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHARESA Y. ALEXANDER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Shareisa Y. Alexander. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Phyllis Moore” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 14, 2009.

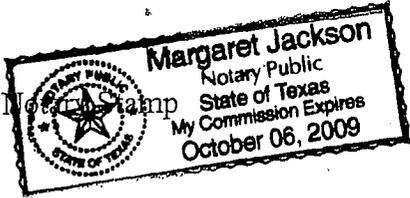
I sent the EDPRP to Ms. Moore at her last known address on May 14, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Ms. Moore received notice of the EDPRP. Ms. Moore failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference”.


Shareisa Y. Alexander
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Sharesa Y. Alexander, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 14 day of July, A.D., 2009.



Margaret Jackson
Notary Signature