

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1214-WR-E **TCEQ ID:** RN105757025 **CASE NO.:** 38045
RESPONDENT NAME: CENTRAL NORTH CONSTRUCTION, LLC

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input 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"/> WATER RIGHTS
<p>SITE WHERE VIOLATION(S) OCCURRED: Rocking L Farms, 2912 Southeast County Road 0220, Navarro County</p> <p>TYPE OF OPERATION: Commercial landscape farm</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on May 29, 2009, alleging that the Respondent was impounding and appropriating state water without a permit. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 28, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4493; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Ms. Anita De Nina, President, CENTRAL NORTH CONSTRUCTION, LLC, 5970 Lindsey Lane, Allen, Texas 75002 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: May 29, 2009</p> <p>Date of Investigation Relating to this Case: June 4, 2009</p> <p>Date of NOV/NOE Relating to this Case: June 26, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to obtain a water rights permit prior to diverting, storing, impounding, taking, or using water of the state. Specifically, the Respondent constructed an impoundment tank of approximately seven to ten surface acres on an unnamed intermittent tributary to Rush Creek [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121].</p>	<p>Total Assessed: \$900</p> <p>Total Deferred: \$180 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$720</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input 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 Respondent was issued a temporary water use permit on July 30, 2009 by the DFW Regional Office.</p>

Additional ID No(s): 0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	7-Jul-2009	Screening	27-Jul-2009	EPA Due	
	PCW	19-Aug-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	CENTRAL NORTH CONSTRUCTION, LLC		
Reg. Ent. Ref. No.	RN105757025		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38045	No. of Violations	1
Docket No.	2009-1214-WR-E	Order Type	1660
Media Program(s)	Water Rights	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Pamela Campbell
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7:**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 27-Jul-2009

Docket No. 2009-1214-WR-E

PCW

Respondent CENTRAL NORTH CONSTRUCTION, LLC

Policy Revision 2 (September 2002)

Case ID No. 38045

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105757025

Media [Statute] Water Rights

Enf. Coordinator Pamela Campbell

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of 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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

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

Screening Date 27-Jul-2009	Docket No. 2009-1214-WR-E	PCW																						
Respondent CENTRAL NORTH CONSTRUCTION, LLC	<small>Policy Revision 2 (September 2002)</small>																							
Case ID No. 38045	<small>PCW Revision October 30, 2008</small>																							
Reg. Ent. Reference No. RN105757025																								
Media [Statute] Water Rights																								
Enf. Coordinator Pamela Campbell																								
Violation Number 1																								
Rule Cite(s)	30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.121																							
Violation Description	Failed to obtain a water rights permit prior to diverting, storing, impounding, taking, or using water of the state, as documented during the June 4, 2009 investigation. Specifically, the Respondent constructed an impoundment tank of approximately seven to ten surface acres on an unnamed intermittent tributary to Rush Creek.																							
Base Penalty	\$5,000																							
>> Environmental, Property and Human Health Matrix																								
	Harm																							
	Major	Moderate	Minor																					
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Actual</td> <td style="width:33%;"></td> <td style="width:33%;"></td> </tr> <tr> <td>Potential</td> <td></td> <td></td> </tr> </table>		Actual			Potential			Percent 0%															
Actual																								
Potential																								
>> Programmatic Matrix																								
	Major	Moderate	Minor																					
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Falsification</td> <td style="width:33%; text-align: center;">x</td> <td style="width:33%;"></td> </tr> </table>		Falsification	x		Percent 10%																		
Falsification	x																							
Matrix Notes	100% of this rule requirement was not met.																							
Adjustment	\$4,500																							
			\$500																					
Violation Events																								
	Number of Violation Events 2	Number of violation days 56																						
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;">daily</td> <td style="width:30%;"></td> <td style="width:30%;"></td> </tr> <tr> <td>weekly</td> <td></td> <td></td> </tr> <tr> <td>monthly</td> <td style="text-align: center;">x</td> <td></td> </tr> <tr> <td>quarterly</td> <td></td> <td></td> </tr> <tr> <td>semiannual</td> <td></td> <td></td> </tr> <tr> <td>annual</td> <td></td> <td></td> </tr> <tr> <td>single event</td> <td></td> <td></td> </tr> </table>		daily			weekly			monthly	x		quarterly			semiannual			annual			single event			Violation Base Penalty \$1,000
daily																								
weekly																								
monthly	x																							
quarterly																								
semiannual																								
annual																								
single event																								
<p><small>mark only one with an x</small></p> <p>Two monthly events are recommended based on the investigation date (June 4, 2009) to the screening date (July 27, 2009).</p>																								
Good Faith Efforts to Comply			\$100																					
	10.0% Reduction																							
	Before NOV	NOV to EDRP/ Settlement Offer																						
Extraordinary																								
Ordinary		x																						
N/A	(mark with x)																							
Notes	The Respondent received a temporary water use permit on July 30, 2009.																							
Violation Subtotal			\$900																					
Economic Benefit (EB) for this violation																								
Estimated EB Amount	\$1																							
Statutory Limit Test																								
Violation Final Penalty Total			\$900																					
This violation Final Assessed Penalty (adjusted for limits)			\$900																					

Economic Benefit Worksheet

Respondent CENTRAL NORTH CONSTRUCTION, LLC
Case ID No. 38045
Reg. Ent. Reference No. RN105757025
Media Water Rights
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
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$100	4-Jun-2009	30-Jul-2009	0.15	\$1	n/a	\$1
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated delayed cost of obtaining a temporary water use permit. Date required is the investigation date. Final date is the date that the temporary water use permit was issued.

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 TOTAL

\$100

\$1

Compliance History Report

Customer/Respondent/Owner-Operator:

CN603500430

CENTRAL NORTH CONSTRUCTION, LLC

Classification:

Rating:

Regulated Entity:

RN105757025

ROCKING L FARMS

Classification:

Site Rating:

ID Number(s):

Location:

2912 SE COUNTY ROAD 0220, NAVARRO CTY TX

TCEQ Region:

REGION 04 - DFW METROPLEX

Date Compliance History Prepared:

July 10, 2009

Agency Decision Requiring Compliance History:

Enforcement

Compliance Period:

July 10, 2004 to July 10, 2009

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

Name:

Pamela Campbell

Phone: 239 - 4493

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/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

Components (Multimedia) for the Site :

6.
 - A. Final Enforcement Orders, court judgments, 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
CENTRAL NORTH CONSTRUCTION,
LLC
RN105757025

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1214-WR-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 CENTRAL NORTH CONSTRUCTION, LLC ("the Respondent") under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a commercial landscape farm at 2912 Southeast County Road 0220 in Navarro County, Texas (the "Site").
2. The Respondent's Site adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(46).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 1, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Hundred Dollars (\$900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid Seven Hundred Twenty Dollars (\$720) of the administrative penalty and One Hundred Eighty Dollars (\$180) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent was issued a temporary water use permit on July 30, 2009 by the Dallas/Fort Worth Regional Office.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain a water rights permit prior to diverting, storing, impounding, taking, or using water of the state, in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121, as documented during an investigation conducted on June 4, 2009. Specifically, the Respondent constructed an impoundment tank of approximately seven to ten surface acres on an unnamed intermittent tributary to Rush Creek.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: CENTRAL NORTH CONSTRUCTION, LLC, Docket No. 2009-1214-WR-E" to:

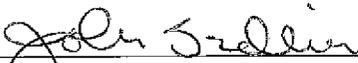
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

12/11/2009

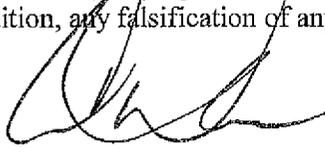
Date

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.

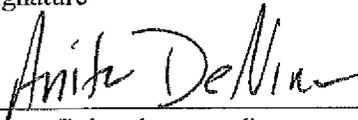
I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- 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.

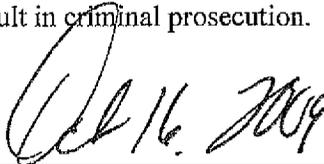
In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature



Name (Printed or typed)
Authorized Representative of
CENTRAL NORTH CONSTRUCTION, LLC



Date



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 I of this Agreed Order.