

Page 1 of 3

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-0389-WQ-E **TCEQ ID:** RN105783492 **CASE NO.:** 39298  
**RESPONDENT NAME:** Central Texas Highway Constructors, LLC

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> SH 130 Segment 6.1 Station 3376 00 to Station 4211 00, begins 600 feet south of County Road 1185 and terminates at the San Marcos River, Caldwell County</p> <p><b>TYPE OF OPERATION:</b> Highway construction site</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on November 16, 2009 alleging that a large area of land disturbed by the SH 130 project drains to a point which discharges on to adjacent property. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on July 26, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Thomas Jecha, P.G., Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Jose Penalver, General Manager, Central Texas Highway Constructors, LLC, P.O. Box 1110, Lockhart, Texas 78644-1110  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> November 16, 2009</p> <p><b>Date of Investigation Relating to this Case:</b> December 7, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> March 4, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failure to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state [30 TEX. ADMIN. CODE §305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15OK34, Part III, Section F.2(a) and F.6., and TEX. WATER CODE § 26.121(a)].</p> <p>2) Failure to remove accumulations of sediment transported from the Site [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.6(d)].</p> <p>3) Failure to modify the SWP3 within seven days following an inspection of controls [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.7].</p> <p>4) Failure to install a sedimentation basin for a common drainage location serving ten or more acres of disturbed area [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.2(c)(i)(A)].</p>	<p><b>Total Assessed:</b> \$23,750</p> <p><b>Total Deferred:</b> \$0  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$23,750</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b></p> <p>Human health or the environment has been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. Removed sediment tracked from the Site to Farm-to-Market Road 2001 on December 7, 2009;</p> <p>b. Installed and began maintaining best management practices and structural controls to minimize future off-site tracking of sediment from the Site and developed and implemented procedures and conducted employee training to ensure accumulations of sediment are removed in a timely manner by February 25, 2010;</p> <p>c. Evaluated the effectiveness of the existing sediment and erosion controls and began maintaining sediment control measures in effective operating condition, including repair or replacement and installation of additional sediment controls to prevent sediment discharge from the Site by April 6, 2010; and</p> <p>d. Modified the SWP3 to include the results of all inspections of controls with associated recommendations, including a rock fence dam near station 3551+50, and developed a procedure to modify the SWP3 within seven days following an inspection of controls by April 20, 2009.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order, install a sedimentation basin sufficient to contain the runoff from the drainage area that flows to the common discharge point at station 3551+00 or implement equivalent controls and document why a sedimentation basin is not feasible;</p> <p>b. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a., as described in Ordering</p>

		<p>Provision No. d.;</p> <p>c. Within 120 days after the effective date of this Agreed Order, remove to the extent practicable and properly dispose of sediment that was discharged from the Site near station 3551+50 and deposited in a tributary of Plum Creek and on adjacent property; and</p> <p>d. Within 135 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 Provision c.</p>
--	--	--

Additional ID No(s): TXR15OK34





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

## ICEQ

DATES	Assigned	8-Mar-2010	Screening	10-Mar-2010	EPA Due	
	PCW	12-Mar-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Central Texas Highway Constructors, LLC		
Reg. Ent. Ref. No.	RN105783492		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39298	No. of Violations	4
Docket No.	2010-0389-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		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)** **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 10-Mar-2010

Docket No. 2010-0389-WQ-E

PCW

Respondent Central Texas Highway Constructors, LLC

Policy Revision 2 (September 2002)

Case ID No. 39298

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105783492

Media [Statute] Water Quality

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 (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%
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 compliance history.

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

Screening Date 10-Mar-2010

Docket No. 2010-0389-WQ-E

PCW

Respondent Central Texas Highway Constructors, LLC

Policy Revision 2 (September 2002)

Case ID No. 39298

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105783492

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15OK34, Part III, Section F.2(a) and F.6., and Tex. Water Code § 26.121(a)

Violation Description

Failed to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state. Specifically, silt fencing installed between stations 3549+00 and 3553+99 provided minimal sediment control and was overwhelmed by storm water transported sediment which breached the silt fencing. Sediment discharged from the Site destroyed aquatic habitat in a tributary of Plum Creek by completely filling approximately 1,000 feet of the tributary with as much as 18 inches of sediment. It is estimated that sediment deposited off-site covers approximately 2.25 acres with a total volume of approximately 754 cubic yards.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or the environment.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 4

93 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$20,000

Four monthly events are recommended from the December 7, 2009 investigation date until case screening on March 10, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$20,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8,770

Violation Final Penalty Total \$20,000

This violation Final Assessed Penalty (adjusted for limits) \$20,000

## Economic Benefit Worksheet

**Respondent** Central Texas Highway Constructors, LLC  
**Case ID No.** 39298  
**Reg. Ent. Reference No.** RN105783492  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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	\$35,600	7-Dec-2009	19-Feb-2011	1.20	\$143	\$2,855	\$2,997
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	\$96,000	7-Dec-2009	19-Feb-2011	1.20	\$5,773	n/a	\$5,773
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to design and install adequate sediment control measures and remove sediment discharged off-site and to a tributary of Plum Creek. The date required is the investigation date 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

\$131,600

TOTAL

\$8,770

Screening Date 10-Mar-2010

Docket No. 2010-0389-WQ-E

PCW

Respondent Central Texas Highway Constructors, LLC

Policy Revision 2 (September 2002)

Case ID No. 39298

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105783492

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.6(d)

Violation Description Failed to remove accumulations of sediment transported from the Site. Specifically, heavy tracking of mud from construction activities covered Farm-to-Market Road 2001 at an entrance to the Site.

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 has been exposed to insignificant amounts of pollutants which would not exceed levels that are 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 80

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

Violation Base Penalty \$1,000

One quarterly event is recommended from the December 7, 2009 investigation until the February 25, 2010 compliance date.

Good Faith Efforts to Comply

25.0% Reduction \$250

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

Notes Compliance was achieved on February 25, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

## Economic Benefit Worksheet

**Respondent** Central Texas Highway Constructors, LLC  
**Case ID No.** 39298  
**Reg. Ent. Reference No.** RN105783492  
**Media** Water Quality  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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				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				0.00	\$0	n/a	\$0
Other (as needed)	\$800	7-Dec-2009	25-Feb-2010	0.22	\$9	n/a	\$9

Notes for DELAYED costs

Estimated cost to remove sediment tracked from the Site onto the road and install controls to minimize further sediment tracking and implement procedures and conduct employee training to ensure accumulations of sediment are removed in a timely manner. The date required is the investigation date and the final date is the date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$800

TOTAL

\$9

Screening Date 10-Mar-2010

Docket No. 2010-0389-WQ-E

PCW

Respondent Central Texas Highway Constructors, LLC

Policy Revision 2 (September 2002)

Case ID No. 39298

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105783492

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.7.

Violation Description

Failed to modify the storm water pollution prevention plan ("SWP3") within seven days following an inspection of controls. Specifically, the SWP3 was not revised to include a rock fence dam near station 3551+50 and associated implementation schedule as recommended on the Construction SW3P Field Inspection and Maintenance Report dated November 24 - 25, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 93 Number of violation days

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.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	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 \$6

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

**Respondent** Central Texas Highway Constructors, LLC  
**Case ID No.** 39298  
**Reg. Ent. Reference No.** RN105783492  
**Media** Water Quality  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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				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				0.00	\$0	n/a	\$0
Other (as needed)	\$300	1-Dec-2009	20-Apr-2010	0.38	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to revise the SWP3. The date required is seven days after the date of the Construction SW3P Field Inspection and Maintenance Report and the final date is the date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$6

Screening Date 10-Mar-2010

Docket No. 2010-0389-WQ-E

PCW

Respondent Central Texas Highway Constructors, LLC

Policy Revision 2 (September 2002)

Case ID No. 39298

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105783492

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.2(c)(i)(A)

Violation Description

Failed to install a sedimentation basin for a common drainage location serving ten or more acres of disturbed area. Specifically, a sedimentation basin was not installed for a drainage area of approximately 57 acres that flows to a common discharge point at station 3551+00.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or the environment as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

93 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two quarterly events are recommended from the December 7, 2009 investigation until the March 10, 2010 case screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

## Economic Benefit Worksheet

**Respondent** Central Texas Highway Constructors, LLC  
**Case ID No.** 39298  
**Reg. Ent. Reference No.** RN105783492  
**Media** Water Quality  
**Violation No.** 4

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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				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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed costs are included in the economic benefit for Violation No. 1.

**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

\$0

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603467374 Central Texas Highway Constructors, LLC Classification: AVERAGE Rating: 3.01

Regulated Entity: RN105783492 SH 130 SEGMENT 6.1 STATION 3376 00 TO STATION 4211 00 Classification: AVERAGE BY DEFAULT Site Rating:3.0'

ID Number(s): STORMWATER PERMIT TXR15OK34

Location: BEGINS 600 FT SOUTH OF CR 1185 AND TERMINATES AT THE SAN MARCOS RIVER IN CALDWELL CO.

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: March 08, 2010

Agency Decision Requiring Compliance Enforcement

Compliance Period: March 08, 2005 to March 08, 2010

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? 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
- 6 Rating Date: 9/1/2009 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.)  
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 TEXAS HIGHWAY  
CONSTRUCTORS, LLC  
RN105783492

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER  
DOCKET NO. 2010-0389-WQ-E**

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 Texas Highway Constructors, LLC ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

**I. FINDINGS OF FACT**

1. The Respondent operates a highway construction site beginning 600 feet south of County Road 1185 and terminates at the San Marcos River in Caldwell County, Texas (the "Site").

2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. During an investigation on December 7, 2009, TCEQ staff documented that silt fencing installed between stations 3549+00 and 3553+99 provided minimal sediment control and was overwhelmed by storm water transported sediment which breached the silt fencing. Sediment, discharged from the Site, destroyed aquatic habitat in a tributary of Plum Creek by completely filling approximately 1,000 feet of the tributary with as much as 18 inches of sediment. It is estimated that sediment deposited off-site covers approximately 2.25 acres with a total volume of approximately 754 cubic yards.
4. During an investigation on December 7, 2009, TCEQ staff documented that heavy tracking of mud from construction activities covered Farm-to-Market Road 2001 at an entrance to the Site.
5. During an investigation on December 7, 2009, TCEQ staff documented that the storm water pollution prevention plan ("SWP3") was not revised to include a rock fence dam near station 3551+50 and associated implementation schedule as recommended on the Construction SW3P Field Inspection and Maintenance Report dated November 24 - 25, 2009.
6. During an investigation on December 7, 2009, TCEQ staff documented that a sedimentation basin was not installed for a drainage area of approximately 57 acres that flows to a common discharge point at station 3551+00.
7. The Respondent received notice of the violations on March 5, 2010.
8. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
  - a. Removed sediment tracked from the Site to Farm-to-Market Road 2001 on December 7, 2009;
  - b. Installed and began maintaining best management practices and structural controls to minimize future off-site tracking of sediment from the Site and developed and implemented procedures and conducted employee training to ensure accumulations of sediment are removed in a timely manner by February 25, 2010;
  - c. Evaluated the effectiveness of the existing sediment and erosion controls and began maintaining sediment control measures in effective operating condition, including repair or replacement and installation of additional sediment controls to prevent sediment discharge from the Site by April 6, 2010; and
  - d. Modified the SWP3 to include the results of all inspections of controls with associated recommendations, including a rock fence dam near station 3551+50, and developed a procedure to modify the SWP3 within seven days following an inspection of controls by April 20, 2009.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state, in violation of 30 TEX. ADMIN. CODE §305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15OK34, Part III, Section F.2(a) and F.6., and TEX. WATER CODE § 26.121(a).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to remove accumulations of sediment transported from the Site, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.6(d).
4. As evidenced by Findings of Fact No. 5, the Respondent failed to modify the SWP3 within seven days following an inspection of controls, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.7.
5. As evidenced by Findings of Fact No. 6, the Respondent failed to install a sedimentation basin for a common drainage location serving ten or more acres of disturbed area, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15OK34 Part III, Section F.2(c)(i)(A).
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent 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.
7. An administrative penalty in the amount of Twenty-Three Thousand Seven Hundred Fifty Dollars (\$23,750) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Twenty-Three Thousand Seven Hundred Fifty Dollar (\$23,750) administrative penalty.

## III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Twenty-Three Thousand Seven Hundred Fifty Dollars (\$23,750) as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made

payable to "TCEQ" and shall be sent with the notation "Re: Central Texas Highway Constructors, LLC, Docket No. 2010-0389-WQ-E" to:

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

2. The Respondent shall undertake the following technical requirements:
- a. Within 90 days after the effective date of this Agreed Order, install a sedimentation basin sufficient to contain the runoff from the drainage area that flows to the common discharge point at station 3551+00 or implement equivalent controls and document why a sedimentation basin is not feasible;
  - b. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a., as described in Ordering Provision No. 2.d.;
  - c. Within 120 days after the effective date of this Agreed Order, remove to the extent practicable and properly dispose of sediment that was discharged from the Site near station 3551+50 and deposited in a tributary of Plum Creek and on adjacent property; and
  - d. Within 135 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 No. 2.c. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines 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:

Water Section, Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S IH 35, Suite 100  
Austin, Texas 78704-5712

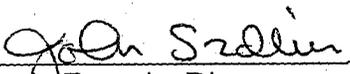
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.
9. 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.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date 9/2/2010

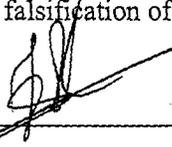
I, the undersigned, have read and understand the attached Agreed Order in the matter of Central Texas Highway Constructors, LLC. I am authorized to agree to the attached Agreed Order on behalf of Central Texas Highway Constructors, LLC, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Central Texas Highway Constructors, LLC waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 05/27/10

JOSE PENALVER  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Central Texas Highway Constructors, LLC

\_\_\_\_\_  
Title G.N.

