

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2008-0139-MLM-E: TCEQ ID RN105137434: CASE NO.: 35255
RESPONDENT NAME: SSS CONSTRUCTION, L.L.C.

ORDER TYPE:		
<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	

CASE TYPE:		
<input 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 30204 Smithson Valley Road, Bulverde, Bexar County

TYPE OF OPERATION: construction materials facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: Two complaints were received alleging that large stockpiles of material were located on the property and discharging sediment directly into the Cibolo Creek, and that the Respondent was burning and burying waste. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainants have not expressed a desire to protest this action or to 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 February 1, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563

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

Respondent: Mr. Shane Pape, Owner, SSS Construction, L.L.C., 30204 Smithson Valley Road, San Antonio, Texas 78261

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 type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: September 18, 2007 October 15, 2007</p> <p>Dates of Investigations Relating to this Case: October 2, 2007 November 2, 2007</p> <p>Date of NOE Relating to this Case: December 15, 2007</p> <p>Background Facts: The EDPRP was filed on February 13, 2008. Respondents filed an answer and the case was referred to SOAH. The Executive Director requested that the case be remanded from SOAH due to possible service and notice defects. The EDPRP was re-filed on March 30, 2009, April 28, 2009, and August 14, 2009. Settlement was achieved and the agreed order was signed on December 2, 2009.</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 obtain approval of an Edwards Aquifer Protection Plan ("EAPP") prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)]. Failed to obtain authorization to discharge storm water associated with sand and gravel mining activities to water in the state through an individual permit or Multi-Sector General Permit issued under the Texas Pollutant Discharge Elimination System [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(c)]. Failed to prevent the unauthorized disposal of approximately 20-30 cubic yards of municipal solid waste at an unauthorized disposal site [30 TEX. ADMIN. CODE § 330.15(c)]. 	<p>Total Assessed: \$15,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$440/\$14,560</p> <p>The Respondent paid \$440 of the administrative penalty. The remaining amount of \$14,560 shall be payable in 35 monthly payments of \$416 each.</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 (PCW 1) Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (PCW 2)</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: Indifference to legal duty.</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately cease accepting and processing any municipal solid waste at the Facility until properly authorized. Within 30 days, remove all accumulated materials, including ashes, and dispose at an authorized facility. Within 35 days: <ol style="list-style-type: none"> Submit an EAPP application for review and approval; and Develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent application to comply with the Multi-Sector Industrial General Permit requirements. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the EAPP application within 30 days after the date of such requests or by any other deadline specified in writing. Within 45 days, submit written certification demonstrating compliance with Ordering Provision nos. 1 through 3.b.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	2-Jan-2008			
	PCW	17-Jan-2008	Screening	17-Jan-2008	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	SSS CONSTRUCTION LLC				
Reg. Ent. Ref. No.	RN105137434				
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	35255	No. of Violations	2		
Docket No.	2008-0139-MLM-E	Order Type	Findings		
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Cynthia Mckaughan		
Multi-Media	Water Quality, Edwards Aquifer	EC's Team	Enforcement Team 7		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change in penalty amount due to average compliance history.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	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.

Total EB Amounts	\$251	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$5,540	<i>*Capped at the Total EB \$ Amount</i>		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$5,000

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$5,000
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Screening Date 17-Jan-2008 **Docket No.** 2008-0139-MLM-E
Respondent SSS CONSTRUCTION LLC
Case ID No. 35255
Reg. Ent. Reference No. RN105137434
Media [Statute] Municipal Solid Waste
Enf. Coordinator Cynthia McKaughan

PCW

Policy Revision 2 (September 2002)
 PCW Revision November 6, 2007

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<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)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

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

Screening Date 17-Jan-2008

Docket No. 2008-0139-MLM-E

PCW

Respondent SSS CONSTRUCTION LLC

Policy Revision 2 (September 2002)

Case ID No. 35255

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN105137434

Media [Statute] Municipal Solid Waste

Enf. Coordinator Cynthia McKaughan

Violation Number 1

Rule Cite(s) 30 Texas Administrative Code § 330.15(c)

Violation Description Failed to prevent the unauthorized disposal of approximately 20-30 cubic yards of municipal solid waste (MSW) at an unauthorized disposal site. Specifically, piles of both processed (brush) and unprocessed (construction and demolition debris and brush) MSW were noted. Additionally, a small pile (3 - 5 cubic yards) of burned material in a pit, an unknown amount of exposed ash in the sidewall of the pit (which appeared to be historic), a small pile of scap metal, a small pile of brush and some incidental waste (rebar, brick) were noted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (10%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 76

Table with frequency options: daily, monthly, quarterly (marked with x), semiannual, annual, single event.

Violation Base Penalty \$1,000

One quarterly event is recommended from the November 2, 2007 investigation date to the January 17 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$22

Violation Final Penalty Total \$1,000

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

Economic Benefit Worksheet

Respondent SSS CONSTRUCTION LLC
Case ID No. 35255
Reg. Ent. Reference No. RN105137434
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$540	2-Nov-2007	31-Aug-2008	0.8	\$22	n/a	\$22
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of 20 cubic yards of MSW (\$27 per cubic yard) at an authorized facility. Date Required is the investigation date and Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$540

TOTAL \$22

Screening Date 17-Jan-2008 **Docket No.** 2008-0139-MLM-E **PCW**
Respondent SSS CONSTRUCTION LLC *Policy Revision 2 (September 2002)*
Case ID No. 35255 *PCW Revision November 6, 2007*
Reg. Ent. Reference No. RN105137434
Media [Statute] Municipal Solid Waste
Enf. Coordinator Cynthia McKaughan

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	
<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"/>
monthly	<input checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

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 SSS CONSTRUCTION LLC
Case ID No. 35255
Reg. Ent. Reference No. RN105137434
Media Municipal Solid Waste
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
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$5,000	2-Oct-2007	31-Aug-2008	0.9	\$229	n/a	\$229
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost associated with developing and implementing a Stormwater Pollution Prevention Plan and submitting a Notice of Intent and associated application fees to obtain authorization under a Multi-Sector General Permit. Date required is the investigation date. Final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$5,000	TOTAL	\$229
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	2-Jan-2008		
	PCW	17-Jan-2008	Screening	17-Jan-2008
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	SSS CONSTRUCTION LLC		
Reg. Ent. Ref. No.	RN105137434		
Facility/Site Region	13-San Antonio	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	35255	No. of Violations	1
Docket No.	2008-0139-MLM-E	Order Type	Findings
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Michael Graham
Multi-Media	Municipal Solid Waste, Water Quality	EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement		<i>Subtotals 2, 3, & 7</i>	\$0
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Notes: No change in penalty amount due to average compliance history.

Culpability	No		0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction		0% Enhancement*	<i>Subtotal 5</i>	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

	0% Enhancement*		<i>Subtotal 6</i>	\$0
Total EB Amounts	\$458	<small>*Capped at the Total EB \$ Amount</small>		
Approx. Cost of Compliance	\$10,000			

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$10,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%		<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

	<i>Final Penalty Amount</i>	\$10,000
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STATUTORY LIMIT ADJUSTMENT		<i>Final Assessed Penalty</i>	\$10,000
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DEFERRAL	0%		Reduction	<i>Adjustment</i>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$10,000
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Screening Date 17-Jan-2008

Docket No. 2008-0139-MLM-E

PCW

Respondent SSS CONSTRUCTION LLC

Policy Revision 2 (September 2002)

Case ID No. 35255

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN105137434

Media [Statute] Edwards Aquifer

Enf. Coordinator Michael Graham

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)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No change in penalty amount due to average compliance history.

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

Screening Date 17-Jan-2008

Docket No. 2008-0139-MLM-E

PCW

Respondent SSS CONSTRUCTION LLC

Policy Revision 2 (September 2002)

Case ID No. 35255

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN105137434

Media [Statute] Edwards Aquifer

Enf. Coordinator Michael Graham

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1)

Violation Description Failed to obtain approval of an Edwards Aquifer protection plan prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, two fourteen acre parcels were disturbed. The investigator observed evidence of ongoing regulated activities on the Site, including mining, screening, and stockpiling of sand and gravel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential			0%	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		x			
	100% of the rule was not met.				

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4 108 Number of violation days

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

Violation Base Penalty \$10,000

Four monthly events are recommended from the October 2, 2007 investigation date to the January 17 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$229

Violation Final Penalty Total \$10,000

This violation Final Assessed Penalty (adjusted for limits) \$10,000

Economic Benefit Worksheet

Respondent SSS CONSTRUCTION LLC
Case ID No. 35255
Reg. Ent. Reference No. RN105137434
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$5,000	2-Oct-2007	31-Aug-2008	0.9	\$229	n/a	\$229
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Cost reflects the amount to prepare and submit a Edwards Aquifer Water Pollution Abatement Plan. The date required is the date of the investigation and the final date is the projected date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,000

TOTAL \$229

Compliance History Report

Customer/Respondent/Owner-Operator: CN603139205 SSS Construction, LLC Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105137434 SSS CONSTRUCTION Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s):
Location: 30204 SMITHSON VALLEY RD, BULVERDE, TX, 78070
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: February 18, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 01, 2003 to August 31, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Michael Graham Phone: 806-796-7635

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? SSS Construction, LLC
4. If Yes, who was/were the prior owner(s)? RAY, HOPE
RAY, RANDALL
PATIN, PHILLIP KENT JR
5. When did the change(s) in ownership occur? 06/30/2005
03/15/2006
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. (CCEDES Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDES 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
SSS CONSTRUCTION, L.L.C.;
RN105137434**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-0139-MLM -E**

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding SSS Construction, L.L.C. (“SSS Construction”) under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and SSS Construction presented this agreement to the Commission.

SSS Construction understands that it has 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, SSS Construction agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 SSS Construction.

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

FINDINGS OF FACT

1. SSS Construction owns and operates a construction materials facility (“the “Facility”) engaged in operating sand and gravel pits and dredges, and engaged in mining, screening, and otherwise preparing sand and gravel for construction uses. The Facility also processes and stores municipal solid waste. The Facility is located at 30204 Smithson Valley Road, Bulverde, Bexar County, Texas.

2. The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Facility 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.
3. During an investigation conducted on October 2, 2007, a TCEQ San Antonio Regional Office investigator documented that SSS Construction:
 - a. Failed to obtain approval of an Edwards Aquifer protection plan prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, two fourteen acre parcels were disturbed. The investigator observed evidence of ongoing regulated activities at the Facility, including mining, screening, and stockpiling of sand gravel; and
 - b. Failed to obtain authorization to discharge storm water associated with sand and gravel mining activities to water in the state through an individual permit or Multi-Sector General Permit issued under the Texas Pollutant Discharge Elimination System.
4. During an investigation conducted on November 2, 2007, a TCEQ San Antonio Regional Office investigator documented that SSS Construction failed to prevent the unauthorized disposal of approximately 20-30 cubic yards of municipal solid waste (MSW) at an unauthorized disposal site. Specifically, piles of both processed (brush) and unprocessed (construction and demolition debris and brush) MSW were noted. Additionally, a small pile (3 - 5 cubic yards) of burned material in a pit, an unknown amount of exposed ash in the sidewall of the pit (which appeared to be historic), a small pile of scrap metal, a small pile of brush and some incidental waste (rebar, brick) were noted.
5. SSS Construction received notice of the violations on or about December 20, 2007.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, SSS Construction is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3.a., SSS Construction failed to obtain approval of an Edwards Aquifer protection plan prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1).

3. As evidenced by Findings of Fact No. 3.b., SSS Construction failed to obtain authorization to discharge storm water associated with sand and gravel mining activities to water in the state through an individual permit or Multi-Sector General Permit issued under the Texas Pollutant Discharge Elimination System, 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. 4, SSS Construction failed to prevent the unauthorized disposal of approximately 20-30 cubic yards of municipal solid waste at an unauthorized disposal site, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against SSS Construction for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of fifteen thousand dollars (\$15,000.00) 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. SSS Construction paid four hundred forty dollars (\$440.00) of the administrative penalty. The remaining amount of fourteen thousand five hundred sixty dollars (\$14,560.00) of the administrative penalty shall be payable in 35 monthly payments of four hundred sixteen dollars (\$416.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If SSS Construction fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of SSS Construction to meet the payment schedule of this Agreed Order constitutes the failure by SSS Construction to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. SSS Construction is assessed an administrative penalty in the amount of fifteen thousand dollars (\$15,000.00) as set forth in Conclusion of Law No. 6, above for violations of TCEQ rules and state statutes. The payment of this administrative penalty and SSS Construction'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 “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: SSS Construction, L.L.C.; Docket No. 2008-0139-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. SSS Construction shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Agreed Order, SSS Construction shall cease accepting and processing any municipal solid waste at the Facility until properly authorized;
 - b. Within 30 days after the effective date of this Agreed Order, SSS Construction shall remove all accumulated materials, including ashes, and dispose at an authorized facility; and
 - c. Within 35 days after the effective date of this Agreed Order, SSS Construction shall:
 - i. Submit an Edwards Aquifer Protection Plan (“EAPP”) application for review and approval, including the associated application fee, for the Facility to:

Edwards Aquifer Protection Program
Austin Regional Office
Texas Commission on Environmental Quality
2800 South Interstate Highway 35, Suite 100
Austin, Texas 78704-5700
 - ii. Develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent application to comply with the Multi-Sector Industrial General Permit requirements in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) to:

Texas Commission on Environmental Quality
Wastewater Permitting Section, MC 148
P.O. Box 13087
Austin, Texas 78711-3087
 - d. SSS Construction shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the EAPP application within 30 days after the date of such requests or by any other deadline specified in writing; and

- e. Within 45 days after the effective date of this Agreed Order, SSS Construction shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c., above.

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.”

SSS Construction shall submit 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:

Tom Haberle, Water Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon SSS Construction. SSS Construction is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility referenced in this Agreed Order.
4. If SSS Construction 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, SSS Construction’s failure to comply is not a violation of this Agreed Order. SSS Construction shall have the burden of establishing to the Executive

Director's satisfaction that such an event has occurred. SSS Construction shall notify the Executive Director within seven days after SSS Construction 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 SSS Construction shall be made in writing to the Executive Director. Extensions are not effective until SSS Construction 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 SSS Construction if the Executive Director determines that SSS Construction 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 SSS Construction 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.
10. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to SSS Construction, or three days after the date on which the Commission mails notice of this Agreed Order to SSS Construction, 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

Benjamin Perdue
For the Executive Director

1/25/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of SSS Construction, L.L.C., 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 in this order and/or failure to timely pay the penalty amount, may result in:

A negative impact on SSS Construction, L.L.C.'s compliance history;

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

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution

Shane Pape
Signature

12-2-09
Date

SHANE PAPE
Name (Printed or typed)
SSS Construction, L.L.C.

OWNER
Title