

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-0903-MLM-E TCEQ ID RN105376123 CASE NO. 37782**  
**RESPONDENT NAME: TOM DYE, CONTRACTOR, LLC**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 0.8 miles south of Farm-to-Market 3238 on the east side of Ranch Road 12, Dripping Springs, Hays County

**TYPE OF OPERATION:** Construction site

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that there was construction activity on an approximately 17 acre site, disturbing at least 3 to 5 acres, without posting of any Edwards Aquifer Protection or Construction General Permit authorizations. There is no record of additional pending enforcement actions regarding this facility location.

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

**COMMENTS RECEIVED:** The Texas Register comment period expired March 29, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Ms. Jennifer Graves, Water Enforcement Section, MC R-15, (956) 430-6023

**TCEQ Regional Contact:** Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929

**Respondent:** Mr. Thomas J. Dye III, President, Tom Dye, Contractor, LLC, 15840 Hamilton Pool Road, Austin, Texas 78738

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

## DOCKET NO.: 2009-0903-MLM-E

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> February 19, 2009</p> <p><b>Date of Investigation Relating to this Case:</b> March 26, 2009 and April 2, 2009</p> <p><b>Date of NOE Relating to this Case:</b> May 29, 2009</p> <p><b>Background Facts:</b> The case was referred to the Litigation Division on November 10, 2009. The EDPRP was filed on December 11, 2009. Settlement was achieved and the agreed order was signed on January 29, 2010.</p> <p><b>Current Compliance Status:</b> No outstanding Technical Requirements.</p> <p><b>MLM:</b></p> <ol style="list-style-type: none"> <li>Failed to comply with the general prohibition on outdoor burning within the state of Texas [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to comply with the general prohibition of dumping or disposal of municipal solid waste within the state of Texas [30 TEX. ADMIN. CODE § 330.15(c)].</li> <li>Failed to obtain authorization under a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit to discharge storm water associated with construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(c)].</li> <li>Failed to provide written notification to the TCEQ Austin Regional Office no later than 48 hours prior to commencing construction [30 TEX. ADMIN. CODE § 213.5(f)(1) and Edwards Aquifer Protection Plan ("EAPP") 11-07111901 Standard Condition No. 4].</li> <li>Failed to comply with all conditions of an approved Contributing Zone Plan ("CZP") for the Site [30 TEX. ADMIN. CODE § 213.23(j) and EAPP 11-07111901 Standard Condition No. 5]</li> </ol>	<p><b>Total Assessed:</b> \$4,235</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$187/\$4,048</p> <p>The Respondent paid \$187 of the administrative penalty. The remaining amount of \$4,048 shall be payable in 23 monthly payments of \$176 each.</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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent performed the following corrective actions at the Site:</p> <ol style="list-style-type: none"> <li>Removed all unauthorized materials from the burn pile at the Site as of April 2, 2009;</li> <li>Sent a written statement to the TCEQ on April 23, 2009, that all outdoor burning rules would be followed;</li> <li>Submitted documentation that was received on May 28, 2009 by the TCEQ's Austin Regional Office indicating that TPDES Construction General Permit ("CGP") coverage was obtained through TCEQ's online STEERS database;</li> <li>Submitted documentation to the Austin Regional Office that included notification of the commencement of construction on February 22, 2009; and</li> <li>Submitted documentation that was received on April 23, 2009 by the TCEQ Austin Regional Office that included photographs of sediment controls installed at the Site.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	1-Jun-2009			
	<b>PCW</b>	4-Sep-2009	<b>Screening</b>	9-Jun-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Tom Dye, Contractor, LLC				
<b>Reg. Ent. Ref. No.</b>	RN105376123				
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	37782	<b>No. of Violations</b>	5		
<b>Docket No.</b>	2009-0903-MLM-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>	Air	<b>Enf. Coordinator</b>	Jennifer Graves		
		<b>EC's Team</b>	Enforcement Team 1		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,500
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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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No adjustment due to compliance history.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$1,375
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$145	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$6,260	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,125
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	2.7%	<b>Adjustment</b>	\$110
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend enhancement to capture avoided costs associated with the violations.

**Final Penalty Amount** \$4,235

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,235
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$4,235
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Screening Date 9-Jun-2009

Docket No. 2009-0903-MLM-E

PCW

Respondent Tom Dye, Contractor, LLC

Policy Revision 2 (September 2002)

Case ID No. 37782

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105376123

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

### 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 adjustment due to compliance history.

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

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0903-MLM-E **PCW**  
**Respondent** Tom Dye, Contractor, LLC *Policy Revision 2 (September 2002)*  
**Case ID No.** 37782 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105376123  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jennifer Graves

**Violation Number** 1  
**Rule Cite(s)** 30 Tex. Admin. Code §§ 111.201 and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to comply with the general prohibition on outdoor burning within the state of Texas. Specifically, the Respondent burned unauthorized materials which included aerosol cans, paint cans, drywall, scrap metal pieces, rebar, polyvinyl chloride pipe, and silt fencing, as documented during an investigation conducted on March 26, 2009.

**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** As a result of the violation, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 1 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 based on documentation of the violation during the March 26, 2009 investigation.

**Good Faith Efforts to Comply** 25.0% Reduction \$250

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

**Notes** The Respondent came into compliance on April 2, 2009.

**Violation Subtotal** \$750

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$110 **Violation Final Penalty Total** \$770

**This violation Final Assessed Penalty (adjusted for limits)** \$770

## Economic Benefit Worksheet

**Respondent** Tom Dye, Contractor, LLC  
**Case ID No.** 37782  
**Reg. Ent. Reference No.** RN105376123  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	26-Mar-2009	2-Apr-2009	0.02	\$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 cost to remove all remains in the unauthorized burning area and dispose of the waste at an authorized facility. The date required is the date of the initial investigation. The final date is the 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]	\$110	26-Mar-2009	2-Apr-2009	0.00	\$0	\$110	\$110
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost associated with the disposal of approximately 20 cubic yards of waste by unauthorized burning. The date required is the date of the initial investigation. The final date is the date of compliance.

Approx. Cost of Compliance

\$610

**TOTAL**

\$110

<b>Screening Date</b>	9-Jun-2009	<b>Docket No.</b>	2009-0903-MLM-E	<b>PCW</b>
<b>Respondent</b>	Tom Dye, Contractor, LLC	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	37782	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN105376123			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Jennifer Graves			

<b>Violation Number</b>	2
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)
<b>Violation Description</b>	Failed to obtain authorization under a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit to discharge storm water associated with construction activities, as documented during an investigation conducted on April 2, 2009. Specifically, the investigator observed construction activities at the Site and a permit had not been obtained.

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

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

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	<b>Percent</b>
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

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

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	<b>Before NOV</b>	<b>NOV to EDPRP/Settlement Offer</b>
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	x	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Tom Dye, Contractor, LLC  
**Case ID No.** 37782  
**Reg. Ent. Reference No.** RN105376123  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$2,000	2-Apr-2009	28-May-2009	0.15	\$1	\$20	\$21
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	2-Apr-2009	28-May-2009	0.15	\$1	n/a	\$1
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a storm water permit and to develop and implement a storm water pollution prevention plan (SWP3). Date required is the investigation date. 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

\$2,100

TOTAL

\$22

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0903-MLM-E **PCW**  
**Respondent** Tom Dye, Contractor, LLC *Policy Revision 2 (September 2002)*  
**Case ID No.** 37782 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105376123  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jennifer Graves

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin Code § 213.23(j) and Edwards Aquifer Protection Plan ("EAPP") 11-07111901 Standard Conditions No. 5  
**Violation Description** Failed to comply with all conditions of an approved Contributing Zone Plan ("CZP") for the Site, as documented during an investigation conducted on April 2, 2009. Specifically, the investigator observed that the Respondent failed to comply with the erosion and sediment control requirements outlined in the approved CZP letter by failing to install silt fencing around the Site.  
**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			x	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

**Matrix Notes** As a result of the violation, human health or the environment could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

**Adjustment** \$9,500  
 \$500

**Violation Events**

Number of Violation Events 1 21 Number of violation days  
 mark only one with an x  
 daily  
 weekly  
 monthly  
 quarterly  
 semiannual  
 annual  
 single event x  
**Violation Base Penalty** \$500

One single event is recommended based on documentation of the violation during the April 2, 2009 investigation.

**Good Faith Efforts to Comply** 25.0% Reduction \$125

Before NOV NOV to EDPRP/Settlement Offer  
 Extraordinary  
 Ordinary x  
 N/A (mark with x)  
**Notes** The Respondent achieved compliance on April 23, 2009.  
**Violation Subtotal** \$375

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$12 **Violation Final Penalty Total** \$385  
**This violation Final Assessed Penalty (adjusted for limits)** \$385

## Economic Benefit Worksheet

**Respondent** Tom Dye, Contractor, LLC  
**Case ID No.** 37782  
**Reg. Ent. Reference No.** RN105376123  
**Media** Water Quality  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment	\$3,000	2-Apr-2009	23-Apr-2009	0.06	\$1	\$12	\$12
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

Actual cost to purchase and install sediment and erosion controls. Date required is the investigation date. 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

\$3,000

TOTAL

\$12

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0903-MLM-E **PCW**  
**Respondent** Tom Dye, Contractor, LLC *Policy Revision 2 (September 2002)*  
**Case ID No.** 37782 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105376123  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jennifer Graves

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 213.5(f)(1) and EAPP 11-07111901 Standard Conditions No. 4  
**Violation Description** Failed to provide written notification to the TCEQ Austin Regional Office no later than 48 hours prior to commencing construction, as documented during an investigation conducted on April 2, 2009. Specifically, the investigator documented that the Notice of Construction had not been submitted.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

**>> Programmatic Matrix**

OR	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 21 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 based on documentation of the violation during the April 2, 2009 investigation.

**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** The Respondent achieved compliance on April 23, 2009.

**Violation Subtotal** \$750

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$0 **Violation Final Penalty Total** \$770

**This violation Final Assessed Penalty (adjusted for limits)** \$770

## Economic Benefit Worksheet

**Respondent** Tom Dye, Contractor, LLC  
**Case ID No.** 37782  
**Reg. Ent. Reference No.** RN105376123  
**Media** Water Quality  
**Violation No.** 4

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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$50	2-Apr-2009	23-Apr-2009	0.06	\$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 cost to prepare and submit notification to the TCEQ. Date required is the initial investigation date.  
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

\$50

**TOTAL**

\$0

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0903-MLM-E **PCW**  
**Respondent** Tom Dye, Contractor, LLC *Policy Revision 2 (September 2002)*  
**Case ID No.** 37782 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105376123  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jennifer Graves

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		x
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="10%"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	x
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	x	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Tom Dye, Contractor, LLC  
**Case ID No.** 37782  
**Reg. Ent. Reference No.** RN105376123  
**Media** Water Quality  
**Violation No.** 5

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				0.00	\$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	\$500	26-Mar-2009	2-Apr-2009	0.02	\$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

See 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

\$500

TOTAL

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602789984 Tom Dye, Contractor, LLC Classification: AVERAGE Rating: 2.25  
Regulated Entity: RN105376123 TOM DYE SUBDIVISION NO 1 Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT

ID Number(s): STORMWATER PERMIT TXR150A28  
EDWARDS AQUIFER REGISTRATION 11-07111901

Location: .8 MILE S OF FM 3238 ON EAST SIDE OF  
RR 12, HAYS CO, TX

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: June 02, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 02, 2004 to June 02, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jennifer Graves Phone: 956-430-6023

## 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: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

- 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  
TOM DYE, CONTRACTOR, LLC;  
RN105376123**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-0903-MLM-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Tom Dye, Contractor, LLC (“Tom Dye, LLC”) under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE chs. 361 and 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Tom Dye, LLC appear before the Commission and together stipulate that:

1. Tom Dye, LLC operates a construction site located 0.8 miles south of Farm-to-Market Road 3238 on the east side of Ranch Road 12, Dripping Springs, Hays County, Texas (the “Site”). The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. Tom Dye, LLC has discharged waste from the Site 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.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and TCEQ rules.
3. The Commission and Tom Dye, LLC agree that the Commission has jurisdiction to enter this Agreed Order, and that Tom Dye, LLC is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Tom Dye, LLC of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

5. An administrative penalty in the amount of four thousand two hundred thirty-five dollars (\$4,235.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Tom Dye, LLC paid one hundred eighty-seven dollars (\$187.00) of the administrative penalty. The remaining amount of four thousand forty-eight dollars (\$4,048.00) of the administrative penalty shall be payable in twenty-three (23) monthly payments of one hundred seventy-six dollars (\$176.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Tom Dye, LLC 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, Tom Dye, LLC’s failure to meet the payment schedule of this Agreed Order constitutes the failure by Tom Dye, LLC to timely and satisfactorily comply with all of the terms of this Agreed Order.
6. 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.
7. The Executive Director of the TCEQ and Tom Dye, LLC agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that Tom Dye, LLC implemented the following corrective measures at the Site in response to this enforcement action:
  - a. Removed all unauthorized materials from the burn pile at the Site as of April 2, 2009.
  - b. Sent a written statement to the TCEQ on April 23, 2009, that all outdoor burning rules would be followed.
  - c. Submitted documentation that was received on May 28, 2009 by the TCEQ’s Austin Regional Office indicating that Texas Pollutant Discharge Elimination System (“TPDES”) Construction General Permit (“CGP”) coverage was obtained through TCEQ’s online STEERS database.
  - d. Submitted documentation to the Austin Regional Office that included notification of the commencement of construction on February 22, 2009.
  - e. Submitted documentation that was received on April 23, 2009 by the TCEQ Austin Regional Office that included photographs of sediment controls installed at the Site.

9. 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 Tom Dye, LLC has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

1. During an investigation conducted on March 26, 2009, a TCEQ Austin Regional Office investigator documented that Tom Dye, LLC violated:
  - a. 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with the general prohibition on outdoor burning within the state of Texas. Specifically, the investigator observed a burn pile containing aerosol cans, paint cans, drywall, scrap metal pieces, rebar, polyvinyl chloride pipe, and silt fencing still smoking due to recent burning activity.
  - b. 30 TEX. ADMIN. CODE § 330.15(c) by failing to comply with the general prohibition of dumping or disposal of municipal solid waste within the state of Texas. Specifically, approximately 20 cubic yards of waste, including aerosol cans, paint cans, drywall, scrap metal pieces, rebar, polyvinyl chloride pipe, and silt fencing, were disposed at an unauthorized site.
2. During an investigation conducted on April 2, 2009, a TCEQ Austin Regional Office investigator documented that Tom Dye, LLC violated the following requirements:
  - a. 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c) by failing to obtain authorization under a TPDES Construction General Permit to discharge storm water associated with construction activities. Specifically, the investigator observed construction activities at the Site and a permit had not been obtained.
  - b. 30 TEX. ADMIN. CODE § 213.5(f)(1) and Edwards Aquifer Protection Plan (“EAPP”) 11-07111901, Standard Condition No. 4 by failing to provide written notification to the TCEQ Austin Regional Office no later than 48 hours prior to commencing construction. Specifically, the investigator documented that the Notice of Construction had not been submitted.

- c. 30 TEX. ADMIN CODE § 213.23(j) and EAPP 11-07111901, Standard Condition No. 5 by failing to comply with all conditions of an approved Contributing Zone Plan (“CZP”) for the Site. Specifically, the investigator observed that Tom Dye, LLC failed to comply with the erosion and sediment control requirements outlined in the approved CZP letter by failing to install silt fencing around the Site.
3. Tom Dye, LLC received notice of the violations on or about June 3, 2009.

### **III. DENIALS**

Tom Dye, LLC denies each allegation in Section II (“Allegations”).

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Tom Dye, LLC pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Tom Dye, LLC’s compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Tom Dye, Contractor, LLC; Docket No. 2009-0903-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

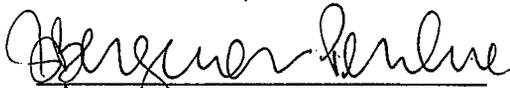
2. The provisions of this Agreed Order shall apply to and be binding upon Tom Dye, LLC. Tom Dye, LLC is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Tom Dye, LLC 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.
  
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Tom Dye, LLC, or three days after the date on which the Commission mails notice of this Agreed Order to Tom Dye, LLC, 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

3/10/2010

\_\_\_\_\_  
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 the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on Tom Dye, LLC's compliance history;
- Greater scrutiny of any permit applications submitted by Tom Dye, LLC;
- 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 Tom Dye, LLC;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Tom Dye, LLC; and
- TCEQ seeking other relief as authorized by law.

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

  
\_\_\_\_\_  
Signature

Tom Dye

\_\_\_\_\_  
Name (Printed or typed)

Authorized representative of  
Tom Dye, Contractor, LLC

1/29/2010  
\_\_\_\_\_  
Date

President

\_\_\_\_\_  
Title