

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-1326-WQ-E **TCEQ ID:** RN104854765 **CASE NO.:** 38137
RESPONDENT NAME: Williamson County and Ranger Excavating, L.P.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input 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>SITE WHERE VIOLATION(S) OCCURRED: Williamson County Ronald Reagan South Phase II, located along County Road 268 from Farm-to-Market Road 2243, 0.5 mile north of State Highway 29, Williamson County</p> <p>TYPE OF OPERATION: Construction site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondents has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 19, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney/SEP Coordinator: None</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. Jeremy Escobar, Enforcement Division, Enforcement Team 3, MC R-14, (361) 825-3422; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495</p> <p style="margin-left: 20px;">Respondent: Mr. Jim Ivan, Vice President, Williamson County and Ranger Excavating, L.P., 5222 Thunder Creek Road, Suite B-1, Austin, Texas 78759</p> <p style="margin-left: 20px;">Mr. Mark McKenzie, President, McKenzie Interests, Inc. (General Partner of Ranger Excavating, L.P.), 5222 Thunder Creek Road, Suite B-1, Austin, Texas 78759</p> <p style="margin-left: 20px;">The Honorable Dan A. Gattis, County Judge, Williamson County, 301 South Inner Loop, Georgetown, Texas 78626</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 19, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 31, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to maintain authorization to discharge storm water under the Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP"). Specifically, their CGP (TXR152073) expired June 3, 2008 [30 TEX. ADMIN. CODE § 205.5(c) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p> <p>2) Failure to prevent the unauthorized discharge of pollutants into or adjacent to water in the state. Specifically, heavy erosion was noted along the roadside's four outer major discharge channels at the Ronald Reagan Boulevard bridge over the South Fork of the San Gabriel River. Sediment discharged from the areas of the project into the river. Silt accumulations were traced downstream adjacent to the northwestern drainage approximately 200 feet. A fine layer of silt was noted on the rocks and river bottom adjacent to the discharge points [TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$22,950</p> <p>Total Deferred: \$4,590 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$18,360</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>CN600897888 and CN602783037 Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondents used a sump pump to extract and remove the silt discharged on July 31, 2009, and re-establish temporary erosion controls.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondents to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, develop and implement a storm water pollution prevention plan and submit a Notice of Intent to obtain a TPDES CGP;</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a;</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification that permanent sediment and erosion stability controls have been implemented at the Site; and</p> <p>d. Within 195 days after the effective date of this Agreed Order, submit a Notice of Termination.</p>

Additional ID No(s): TXR15AR46



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Aug-2009	Screening	5-Aug-2009	EPA Due	
	PCW	2-Nov-2009				

RESPONDENT/FACILITY INFORMATION

Respondent	Williamson County and Ranger Excavating, L.P.		
Reg. Ent. Ref. No.	RN104854765		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	38137	No. of Violations	2
Docket No.	2009-1326-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jeremy Escobar
		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 **\$22,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 2.0% Enhancement Subtotals 2, 3, & 7 **\$450**

Notes: An enhancement is recommended because the Respondents received one NOV with dissimilar violations.

Culpability No 0.0% Enhancement Subtotal 4 **\$0**

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 **\$0**

Economic Benefit 0.0% Enhancement* Subtotal 6 **\$0**

Total EB Amounts \$1,231
Approx. Cost of Compliance \$27,100
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$22,950**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$22,950**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$22,950**

DEFERRAL 20.0% Reduction Adjustment **-\$4,590**

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$18,360**

Screening Date 5-Aug-2009

Docket No. 2009-1326-WQ-E

PCW

Respondent Williamson County and Ranger Excavating, L.P.

Policy Revision 2 (September 2002)

Case ID No. 38137

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104854765

Media [Statute] Water Quality

Enf. Coordinator Jeremy Escobar

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	1	2%
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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

An enhancement is recommended because the Respondents received one NOV with dissimilar violations.

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

Screening Date 5-Aug-2009		Docket No. 2009-1328-WQ-E		PCW
Respondent Williamson County and Ranger Excavating, L.P.				
Case ID No. 38137				
Reg. Ent. Reference No. RN104854765				
Media [Statute] Water Quality				
Enf. Coordinator Jeremy Escobar				
Violation Number		1		
Rule Cite(s)		30 Tex. Admin. Code § 205.5(c) and 40 Code of Federal Regulations § 122.26(c)		
Violation Description		Failed to maintain authorization to discharge storm water under the Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP"). Specifically, their CGP (TXR152073) expired June 3, 2008, after which time the construction continued.		
Base Penalty				\$10,000
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Major	Moderate	Minor	
	Actual	Potential	Percent	0%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	x			Percent 10%
Matrix Notes	100% of the rule requirement was not met.			
Adjustment				\$9,000
				\$1,000
Violation Events				
Number of Violation Events		15		
		428		
Number of violation days				
mark only one with an x	daily			
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
Violation Base Penalty				\$15,000
Fifteen monthly events are recommended from June 3, 2008 (permit expiration date) to August 5, 2009 (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 Respondents do not meet the good faith criteria for this violation.		
Violation Subtotal				\$15,000
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$259		Violation Final Penalty Total \$15,300
This violation Final Assessed Penalty (adjusted for limits)				\$15,300

Economic Benefit Worksheet**Respondent** Williamson County and Ranger Excavating, L.P.**Case ID No.** 38137**Reg. Ent. Reference No.** RN104854765**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	\$2,000	3-Jun-2008	18-Mar-2010	1.79	\$12	\$239	\$250
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	3-Jun-2008	18-Mar-2010	1.79	\$9	n/a	\$9
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. Date required is the date the permit expired. The final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,100

TOTAL

\$259

Screening Date 5-Aug-2009		Docket No. 2009-1326-WQ-E		PCW
Respondent Williamson County and Ranger Excavating, L.P.				
Case ID No. 38137				
Reg. Ent. Reference No. RN104854765				
Media [Statute] Water Quality				
Enf. Coordinator Jeremy Escobar				
Violation Number		Rule Cite(s)		
2		Tex. Water Code § 26.121(a)		
Violation Description		<p>Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state. Specifically, heavy erosion was noted along the roadside's four outer major discharge channels at the Ronald Reagan Boulevard bridge over the South Fork of the San Gabriel River. Sediment discharged from the areas of the project into the river. Silt accumulations were traced downstream adjacent to the northwestern drainage approximately 200 feet. A fine layer of silt was noted on the rocks and river bottom adjacent to the discharge points.</p>		
Base Penalty				\$10,000
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual		x	
	Potential			
Percent				25%
>> Programmatic Matrix				
Falsification Major Moderate Minor				
Percent				0%
Matrix Notes				
Human health or the environment was exposed to significant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.				
Adjustment				\$7,500
				\$2,500
Violation Events				
Number of Violation Events		Number of violation days		
3		77		
mark only one with an x	daily			
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
Violation Base Penalty				\$7,500
Three monthly events are recommended from May 19, 2009 (date of investigation) to August 5, 2009 (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 Respondents do not meet the good faith criteria for this violation		
Violation Subtotal				\$7,500
Economic Benefit (EB) for this violation				
Statutory Limit Test				
Estimated EB Amount		Violation Final Penalty Total		
\$972		\$7,650		
This violation Final Assessed Penalty (adjusted for limits)				\$7,650

Economic Benefit Worksheet

Respondent Williamson County and Ranger Excavating, L.P.
Case ID No. 38137
Reg. Ent. Reference No. RN104854765
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description: No con'tmas. 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	\$15,000	19-May-2009	18-Mar-2010	0.83	\$42	\$830	\$872
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	\$10,000	19-May-2009	31-Jul-2009	0.20	\$100	n/a	\$100
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost associated with cleaning the discharged sediment from the site and engineering and construction of permanent erosion control measures. The date required is the date of investigation. The final date is the date of the clean up of sediment was completed, and the estimated date of compliance with permanent erosion control requirements.

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

\$25,000

TOTAL

\$972

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600897888	Williamson County	Classification: AVERAGE	Rating: 2.93
Regulated Entity:	RN104854765	WILLIAMSON COUNTY RONALD REAGAN SOUTH PHASE II	Classification: AVERAGE	Site Rating: 1.83
ID Number(s):				
Location:	ON FROM FM2243 TO 0.5MI N OF SH29			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 29, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 01, 2004 to November 01, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jeremy Escobar	Phone:	825-3422	

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.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	04/12/2006	(456382)
2	09/11/2006	(511781)
3	03/19/2007	(543656)
4	07/31/2009	(747557)
5	07/31/2009	(763953)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/14/2006 (456382)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR150000 PERMIT

Description: Failure to describe the responsibilities of each operator in the shared SWP3.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR150000 PERMIT

Description: Failure to include a copy of the construction general permit in the SWP3.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR150000 PERMIT

Description: Failure to maintain controls.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR150000 PERMIT

Description: Failure to implement measures for down slope boundaries for disturbed areas of 10 acres or more.

- 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

Compliance History Report

Customer/Respondent/Owner-Operator: CN602783037 Ranger Excavating, L.P. Classification: AVERAGE Rating: 2.58
Regulated Entity: RN104854765 WILLIAMSON COUNTY RONALD REAGAN SOUTH PHASE II Classification: AVERAGE Site Rating: 1.00
ID Number(s):
Location: ON FROM FM2243 TO 0.5MI N OF SH29
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: March 29, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 01, 2004 to November 01, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jeremy Escobar Phone: 825-3422

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.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	04/12/2006	(456382)
2	03/19/2007	(543656)
3	07/31/2009	(763953)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/14/2006 (456382)

Self NO Classification: Minor
Report?

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR150000 PERMIT

Description: Failure to describe the responsibilities of each operator in the shared SWP3.

Self NO Classification: Minor
Report?

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR150000 PERMIT

Description: Failure to include a copy of the construction general permit in the SWP3.

Self NO Classification: Minor
Report?

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR150000 PERMIT

Description: Failure to maintain controls.

Self NO Classification: Minor
Report?

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

TXR150000 PERMIT

Description: Failure to implement measures for down slope boundaries for disturbed areas of 10 acres or more.

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
WILLIAMSON COUNTY AND
RANGER EXCAVATING, L.P.
RN104854765

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§
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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2009-1326-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Williamson County and Ranger Excavating, L.P. ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a construction site located along County Road 268 from Farm-to-Market Road 2243, 0.5 mile north of State Highway 29 in Williamson County, Texas (the "Site").
2. The Respondents have 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. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about August 5, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twenty-Two Thousand Nine Hundred Fifty Dollars (\$22,950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Eighteen Thousand Three Hundred Sixty Dollars (\$18,360) of the administrative penalty and Four Thousand Five Hundred Ninety Dollars (\$4,590) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondents used a sump pump to extract and remove the silt discharged on July 31, 2009, and re-establish temporary erosion controls.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner (Williamson County) and operator (Ranger Excavating, L.P.) of the Site, the Respondents are alleged to have:

1. Failed to maintain authorization to discharge storm water under the Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP"), in violation of 30 TEX. ADMIN. CODE § 205.5(c) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on May 19, 2009. Specifically, their CGP (TXR152073) expired June 3, 2008.
2. Failed to prevent the unauthorized discharge of pollutants into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on May 19, 2009. Specifically, heavy erosion was noted along the roadside's four outer major discharge channels at the Ronald Reagan Boulevard bridge over the South Fork of the San Gabriel River. Sediment discharged from the areas of the project into the river. Silt accumulations were traced downstream adjacent to the northwestern drainage approximately 200 feet. A fine layer of silt was noted on the rocks and river bottom adjacent to the discharge points.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Williamson County and Ranger Excavating, L.P., Docket No. 2009-1326-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 Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, develop and implement a storm water pollution prevention plan and submit a Notice of Intent to obtain a TPDES Construction General Permit requirements to:

Wastewater Permitting Section
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.a, using the certification language given in Ordering Provision No. 3.e. below:
 - c. Within 180 days after the effective date of this Agreed Order, submit written certification that permanent sediment and erosion stability controls have been implemented at the Site using the certification language given in Ordering Provision No. 3.e. below:
 - d. Within 195 days after the effective date of this Agreed Order, submit a Notice of Termination in accordance with TPDES Construction General Permit to:

Texas Commission on Environmental Quality
Applications Review & Processing Team, MC 148
P.O. Box 13087
Austin, Texas 78711-3087

- e. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 3.b. through 3.d. 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, TX 78704-5712

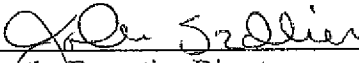
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If the Respondents fail to comply with any 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 Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
8. 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.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, 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

4/22/2010
Date

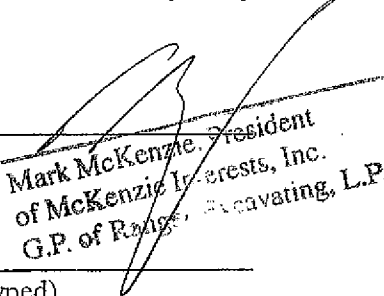
I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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

Signature


Mark McKenzie, President
of McKenzie Interests, Inc.
G.P. of Ranger Excavating, L.P.

2/17/10
Date

Name (Printed or typed)
Authorized Representative of
Ranger Excavating, L.P.

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Zedler

For the Executive Director

4/22/2010

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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- 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.

San A. Gattis

Signature

02-17-2010

Date

San A. Gattis

Name (Printed or typed)
Authorized Representative of
Williamson County

County Judge

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

