

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-0066-WQ-E **TCEQ ID:** RN105518153 **CASE NO.:** 38979
RESPONDENT NAME: MST Lumberton Properties, Ltd.

| | | |
|---|---|--|
| 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: MST Lumberton Properties, Ltd, located 0.25 mile north of the intersection of April Drive and Lumberton High School Drive on United States Highway 69, Lumberton, Hardin 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: A complaint was received on December 3, 2009, alleging that sediment from the construction site was breaching silt fencing and filling a drainage right-of-way. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 24, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, P.G., Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Laurie Baves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Thomas Cormier, Managing Partner and Registered Agent, MST Lumberton Properties, Ltd., 6214 Marble Falls Drive, Lumberton, Texas 77657 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|--|---|---|
| <p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: December 3, 2009</p> <p>Date of Investigation Relating to this Case: December 14, 2009</p> <p>Date of NOV/NOE Relating to this Case: December 21, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>1) Failure to post a construction site notice containing all required information. Specifically, the site-specific Texas Pollutant Discharge Elimination System ("TPDES") authorization number, the estimated project start date, and projected end date or date that disturbed soils will be stabilized, were not included with the posted information [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15KP16, Part III Section D.2.].</p> <p>2) Failure to include all required information in the storm water pollution prevention plan ("SWP3"). Specifically, the SWP3 did not include: the parties responsible for implementation of best management practices ("BMPs") described in the SWP3, locations of all major structural controls on the detailed SWP3 site map, and a description of a sedimentation basin installed as a permanent pollution control [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15KP16, Part III Section B.2(b), F.1(g)(iii), and F.3.].</p> <p>3) Failure to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state. Specifically, sediment controls at the Site were inadequate and not properly maintained to control sediment transported by storm</p> | <p>Total Assessed: \$1,530</p> <p>Total Deferred: \$306 <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: \$1,224</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</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that by January 14, 2010, the Respondent implemented the following corrective measures at the Site:</p> <p>a. Posted a construction site notice containing all required information including: site-specific TPDES authorization number, the estimated project start date, and projected end date or date that disturbed soils will be stabilized;</p> <p>b. Included all required information in the SWP3 including: the parties responsible for implementation of BMPs described in the SWP3, locations of all major structural controls on the detailed SWP3 site map, and a description of a sedimentation basin installed as a permanent pollution control;</p> <p>c. Evaluated BMP design, repaired existing BMPs, and installed additional BMPs to prevent discharges of sediment;</p> <p>d. Removed sediment from Blanco Street and sediment deposited in a roadside ditch along Blanco Street; and</p> <p>e. Included certification language in inspection reports when no incidents of noncompliance are identified.</p> |

| | | |
|--|--|--|
| <p>water. As a result, sediment over-topped silt fencing along an easement drainage ditch behind the properties on Marble Falls Road and was deposited at the north end of Blanco Street and in a roadside ditch parallel to the south end of Blanco Street [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and TPDES General Permit No. TXR15KP16, Part III Section F.2(a) and F.6.].</p> <p>4) Failure to include certification language in inspection reports when no incidents of noncompliance are identified [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15KP16, Part III Section F.7(e)].</p> | | |
|--|--|--|

Additional ID No(s): TPDES General Permit No. TXR15KP16



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | | |
|--------------|---------------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned PCW | 28-Dec-2009 | Screening | 11-Jan-2010 | EPA Due | |
|--------------|---------------------|-------------|------------------|-------------|----------------|--|

| | |
|--|--------------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | MST Lumberton Properties, Ltd. |
| Reg. Ent. Ref. No. | RN105518153 |
| Facility/Site Region | 10-Beaumont |
| Major/Minor Source | Minor |

| | | | |
|--|----------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 38979 | No. of Violations | 4 |
| Docket No. | 2010-0066-WQ-E | Order Type | 1660 |
| Media Program(s) | Water Quality | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Thomas Jecha, P.G. |
| Admin. Penalty \$ Limit Minimum | \$0 | EC's Team | Enforcement Team 3 |
| Maximum | \$10,000 | | |

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability **Subtotal 4**

Notes

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

Economic Benefit **Subtotal 6**

| | | |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts | \$9 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$2,210 | |

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 11-Jan-2010

Docket No. 2010-0066-WQ-E

PCW

Respondent MST Lumberlon Properties, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 38979

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105518153

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

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 11-Jan-2010

Docket No. 2010-0066-WQ-E

PCW

Respondent MST Lumberton Properties, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 38979

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105518153

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15KP16, Part III Section D.2.

Violation Description Failed to post a construction site notice containing all required information. Specifically, the site-specific TPDES authorization number and estimated start date and projected end date or date that disturbed soils will be stabilized, were not included with the posted information.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| Release | Harm | | | Percent |
|-----------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| Actual | | | | 0% |
| Potential | | | | |

>> Programmatic Matrix

| Matrix Notes | Falsification | | | Percent |
|---|---------------|----------|-------|---------|
| | Major | Moderate | Minor | |
| | | | X | 1% |
| At least 70% of the rule requirement was met. | | | | |

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 28

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | X |

mark only one with an x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$10

Before NOV NOV to EDRP/Settlement Offer

| | | |
|---------------|--|---------------|
| Extraordinary | | |
| Ordinary | | X |
| N/A | | (mark with x) |

Notes The Respondent achieved compliance by January 14, 2010.

Violation Subtotal \$90

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$90

This violation Final Assessed Penalty (adjusted for limits) \$90

Economic Benefit Worksheet

Respondent MST Lumberton Properties, Ltd.

Case ID No. 38979

Reg. Ent. Reference No. RN105518153

Media Water Quality

Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

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

Delayed Costs

| | | | | | | | |
|--------------------------|-------|-------------|-------------|------|-----|-----|-----|
| Equipment | | | 0.00 | \$0 | \$0 | \$0 | |
| Buildings | | | 0.00 | \$0 | \$0 | \$0 | |
| Other (as needed) | | | 0.00 | \$0 | \$0 | \$0 | |
| Engineering/construction | | | 0.00 | \$0 | \$0 | \$0 | |
| Land | | | 0.00 | \$0 | n/a | \$0 | |
| Record Keeping System | | | 0.00 | \$0 | n/a | \$0 | |
| Training/Sampling | | | 0.00 | \$0 | n/a | \$0 | |
| Remediation/Disposal | | | 0.00 | \$0 | n/a | \$0 | |
| Permit Costs | | | 0.00 | \$0 | n/a | \$0 | |
| Other (as needed) | \$200 | 14-Dec-2009 | 14-Jan-2010 | 0.08 | \$1 | n/a | \$1 |

Notes for DELAYED costs Estimated cost to complete the Large Construction Site Notice for primary operators with all required information and post it at the Site with the Notice of Intent. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$1

Screening Date 11-Jan-2010

Docket No. 2010-0066-WQ-E

PGW

Respondent MST Lumberton Properties, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 38979

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105518153

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

Violation Number

2

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXR15KP16, Part III Section B.2(b), F.1(g)(II), and F.3.

Violation Description

Failed to include all required information in the storm water pollution prevention plan ("SWP3"). Specifically, the SWP3 did not include the parties responsible for implementation of best management practices ("BMPs") described in the SWP3, locations of all major structural controls on the detailed SWP3 site map, and a description of the sedimentation basin installed as a permanent pollution control.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| Release | Harm | | | Percent |
|-----------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| Actual | | | | 0% |
| Potential | | | | |

>> Programmatic Matrix

| Matrix Notes | Falsification | Major | Moderate | Minor | Percent |
|---|---------------|-------|----------|-------|---------|
| | | | | x | |
| At least 70% of the rule requirement was met. | | | | | |

Adjustment \$8,900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 28

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

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$10

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

Notes The Respondent achieved compliance by January 14, 2010.

Violation Subtotal \$90

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$90

This violation Final Assessed Penalty (adjusted for limits) \$90

Economic Benefit Worksheet

Respondent MST Lumberton Properties, Ltd.
Case ID No. 38979
Reg. Ent. Reference No. RN105518153
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 commas or \$

Delayed Costs

| | | | | | | | |
|--------------------------|-------|-------------|-------------|------|-----|-----|-----|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | \$500 | 14-Dec-2009 | 14-Jan-2010 | 0.08 | \$2 | n/a | \$2 |

Notes for DELAYED costs

Estimated cost to included the missing information in the SWP3 and submit an updated plan. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$2

Screening Date 11-Jan-2010

Docket No. 2010-0066-WQ-E

PCW

Respondent MST Lumberton Properties, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 38979

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105518153

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 305.126(1), Tex. Water Code § 28.121(a), and TPDES General Permit No. TXR15KP16, Part III Section F.2(a) and F.6.

Violation Description

Failed to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state. Specifically, sediment controls at the Site were inadequate and not properly maintained to control sediment transported by storm water. As a result, sediment-over topped silt fencing along an easement drainage ditch behind the properties on Marble Falls Road and was deposited at the north end of Blanco Street and in a roadside ditch parallel to the south end of Blanco Street.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| OR | Release | Harm | | | Percent |
|-----------|---------|-------|----------|-------|---------|
| | | Major | Moderate | Minor | |
| Actual | | | | X | 10% |
| Potential | | | | | |

>> Programmatic Matrix

| Matrix Notes | Falsification | Harm | | | Percent |
|--------------|---------------|-------|----------|-------|---------|
| | | Major | Moderate | Minor | |
| | | | | | 0% |

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 28

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

Violation Base Penalty \$1,000

One quarterly event is recommended from the December 14, 2009 investigation date until screening on January 11, 2010.

Good Faith Efforts to Comply

10.0% Reduction

\$100

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

Notes The Respondent achieved compliance by January 14, 2010.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

Economic Benefit Worksheet

Respondent: MST Lumberton Properties, Ltd.
Case ID No.: 38979
Reg. Ent. Reference No.: RN105518153
Media: Water Quality
Violation No.: 3

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

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

Delayed Costs

| Equipment | | | 0.00 | \$0 | \$0 | \$0 |
|--------------------------|---------|-------------|-------------|------|-----|-----|
| Buildings | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | 0.00 | \$0 | n/a | \$0 |
| Permit costs | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | \$1,500 | 14-Dec-2009 | 14-Jan-2010 | 0.08 | \$6 | \$6 |

Notes for DELAYED costs

Estimated cost to repair and design adequate erosion control measures and remove sediment deposited in streets, drainage ditches, and storm water sewers. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$6

Screening Date 11-Jan-2010

Docket No. 2010-0086-WQ-E

PCW

Respondent MST Lumberton Properties, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 38979

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105518153

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXR15KP16, Part III Section F.7(e)

Violation Description

Failed to include certification language in inspection reports when no incidents of noncompliance are identified.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | |
| Potential | | | |

Percent 0%

>> Programmatic Matrix

| Falsification | Harm | | |
|---------------|-------|----------|-------|
| | Major | Moderate | Minor |
| | | x | |

Percent 5%

Matrix Notes

30% to 70% of the rule requirement was met.

Adjustment \$9,500

\$500

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 \$500

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$50

| | Before NOV | NOV to EDRPP/Settlement Offer |
|---------------|------------|-------------------------------|
| Extraordinary | | |
| Ordinary | | x |
| N/A | | (mark with x) |

Notes

The Respondent achieved compliance by January 14, 2010.

Violation Subtotal \$450

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$450

This violation Final Assessed Penalty (adjusted for limits) \$450

Economic Benefit Worksheet

Respondent MST Lumberton Properties, Ltd.
Case ID No. 38979
Reg. Ent. Reference No. RN105518153
Media Water Quality
Violation No. 4

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--|-----------|---------------|------------|-----|----------------|---------------|-----------|
|--|-----------|---------------|------------|-----|----------------|---------------|-----------|

Item Description: No commas or \$

Delayed Costs

| | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|------|----------------|---------------|-----------|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | \$10 | 14-Dec-2009 | 14-Jan-2010 | 0.08 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to add certification language to the Inspection report. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

| | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|-------------------------------|-----------|---------------|------------|------|----------------|---------------|-----------|
| 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

\$10

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603357419 MST Lumberton Properties, Ltd. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105518153 MST LUMBERTON PROPERTIES LTD Classification: AVERAGE BY Site Rating: 3.01
DEFAULT
ID Number(s): STORMWATER PERMIT TXR15KP16
Location: 0.25 MILE NORTH OF THE INTERSECTION OF APRIL &
LUMBERTON HS DRIVE ON HWY 69, LUMBERTON,
HARDIN CO
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: January 05, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 05, 2005 to January 05, 2010

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

Name: Thomas Jecha, P.G. Phone: 239 - 2576

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MST LUMBERTON PROPERTIES,
LTD.
RN105518153**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-0066-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 MST Lumberton Properties, Ltd. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a construction site located 0.25 mile north of the intersection of April Drive and Lumberton High School Drive on United States Highway 69 in Lumberton, Hardin County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 26, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Five Hundred Thirty Dollars (\$1,530) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Two Hundred Twenty-Four Dollars (\$1,224) of the administrative penalty and Three Hundred Six Dollars (\$306) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that by January 14, 2010, the Respondent implemented the following corrective measures at the Site:
 - a. Posted a construction site notice containing all required information including: site-specific Texas Pollutant Discharge Elimination System ("TPDES") authorization number, the estimated project start date, and projected end date or date that disturbed soils will be stabilized;
 - b. Included all required information in the storm water pollution prevention plan ("SWP3") including: the parties responsible for implementation of best management practices ("BMPs") described in the SWP3; locations of all major structural controls on the detailed SWP3 site map; and a description of a sedimentation basin installed as a permanent pollution control;
 - c. Evaluated BMP design, repaired existing BMPs, and installed additional BMPs to prevent discharges of sediment;
 - d. Removed sediment from Blanco Street and sediment deposited in a roadside ditch along Blanco Street; and
 - e. Included certification language in inspection reports when no incidents of noncompliance are identified.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to post a construction site notice containing all required information, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15KP16, Part III Section D.2., as documented during an investigation conducted on December 14, 2009. Specifically, the site-specific TPDES authorization number, the estimated project start date, and projected end date or date that disturbed soils will be stabilized, were not included with the posted information.
2. Failed to include all required information in the SWP3, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15KP16, Part III Section B.2(b), F.1(g)(iii), and F.3., as documented during an investigation conducted on December 14, 2009. Specifically, the SWP3 did not include: the parties responsible for implementation of BMPs described in the SWP3; locations of all major structural controls on the detailed SWP3 site map; and a description of a sedimentation basin installed as a permanent pollution control.
3. Failed to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and TPDES General Permit No. TXR15KP16, Part III Section F.2(a) and F.6., as documented during an investigation conducted on December 14, 2009. Specifically, sediment controls at the Site were inadequate and not properly maintained to control sediment transported by storm water. As a result, sediment over-topped silt fencing along an easement drainage ditch behind the properties on Marble Falls Road and was deposited at the north end of Blanco Street and in a roadside ditch parallel to the south end of Blanco Street.
4. Failed to include certification language in inspection reports when no incidents of noncompliance are identified, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR15KP16, Part III Section F.7(e), as documented during an investigation conducted on December 14, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: MST Lumberton Properties, Ltd., Docket No. 2010-0066-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 provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szallier
For the Executive Director

5/12/2010
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.

Thomas Cormier
Signature

3-13-2010
Date

Thomas Cormier
Name (Printed or typed)
Authorized Representative of
MST Lumberton Properties, Ltd.

Manager of General Practice
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.

