

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-0067-EAQ-E **TCEQ ID:** RN103952651 **CASE NO.:** 38946

RESPONDENT NAME: Shel-Jenn, Inc.

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 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 checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Heritage Oaks Subdivision Section One, on Shell Road 0.5 mile east of Farm-to-Market Road 2338, Georgetown, Williamson County</p> <p>TYPE OF OPERATION: Single family residential lot</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 Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 26, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, R-04, (817) 588-5886; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. James H. Jacobs, President, Shel-Jenn, Inc., 3613 Williams Drive, Suite 204, Georgetown, Texas 78628-1376 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: September 28, 2009</p> <p>Date of NOE Relating to this Case: December 11, 2009</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to obtain approval of a modification to a Water Pollution Abatement Plan ("WPAP") prior to constructing the modification. Specifically, the water quality pond was not constructed in accordance with the approved WPAP. The WPAP depicts Lot 52 and Lot 51 separated by a portion of the water quality pond, but the pond as built does not separate the lots. Also, the water quality pond failed to contain the required water volume [30 TEX. ADMIN. CODE § 213.4(j) and WPAP 11-03090501 Standard Conditions No. 4].</p> <p>2) Failure to maintain temporary erosion and sedimentation best management practices. Specifically, the silt fence located downgradient of the intersection of Caprock Canyon and Hidden Springs was in disrepair and needed maintenance. Heavy rains caused erosion and sedimentation to accumulate, but not leave the Site [30 TEX. ADMIN. CODE § 213.4(k) and WPAP 11-03090501 Standard Conditions No. 6].</p>	<p>Total Assessed: \$3,550</p> <p>Total Deferred: \$710 <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: \$2,840</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input 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 on December 8, 2009, the Respondent submitted documentation showing that the silt fence was repaired and the sediment accumulations downgradient were removed.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit a complete WPAP modification application to the TCEQ Austin Regional Office for the modifications that were constructed on the water quality pond; and</p> <p>b. Within 60 days after the effective date of this Agreed Order, submit written certification that modification to WPAP 11-03090501 has been obtained.</p>

Additional ID No(s): EAP Registration No. 11-03090501



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	14-Dec-2009	Screening	23-Dec-2009	EPA Due	
	PCW	11-Jan-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	Shel-Jenn, Inc.		
Reg. Ent. Ref. No.	RN103952651		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38946	No. of Violations	2
Docket No.	2010-0067-EAQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5.0% Enhancement Subtotals 2, 3, & 7:

Notes: The Respondent received one Notice of Violation for similar violations.

Culpability No 0.0% Enhancement Subtotal 4:

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5:

Economic Benefit 0.0% Enhancement Subtotal 6:

Total EB Amounts	\$63
Approx. Cost of Compliance	\$2,150

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal:

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment:

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount:

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty:

DEFERRAL 20.0% Reduction Adjustment:

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

Screening Date 23-Dec-2009

Docket No. 2010-0067-EAQ-E

PGW

Respondent Shel-Jenn, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38946

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103952651

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

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)	1	5%
	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) 5%

>> 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

The Respondent received one Notice of Violation for similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 23-Dec-2009

Docket No. 2010-0067-EAQ-E

PCW

Respondent Shel-Jenn, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38946

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103952651

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(j) and Water Pollution Abatement Plan ("WPAP") 11-03090501 Standard Conditions No. 4

Violation Description

Failed to obtain approval of a modification to a WPAP prior to constructing the modification. Specifically, the water quality pond was not constructed in accordance with the approved WPAP. The WPAP depicts Lot 52 and Lot 51 separated by a portion of the water quality pond, but the pond as built does not separate the lots. Also, the water quality pond failed to contain the required water volume.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	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 3

87 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,000

Three monthly events are recommended from the period of September 28, 2009 (date of investigation) to December 23, 2009 (date of screening).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$53

Violation Final Penalty Total \$3,150

This violation Final Assessed Penalty (adjusted for limits) \$3,150

Economic Benefit Worksheet

Respondent Shel-Jenn, Inc.
Case ID No. 38946
Reg. Ent. Reference No. RN103952651
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	\$1,150	28-Sep-2009	31-Aug-2010	0.92	\$53	\$53
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost (\$850 modification fee and \$500 for the cost of the application) to submit a modification application and obtain approval of the revised configuration of the pond. Date required is the investigation date. Final date is the projected date of compliance.

Avoided Costs

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

Disposal			0.00	\$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

\$1,150

TOTAL

\$53

Screening Date 23-Dec-2009

Docket No. 2010-0067-EAQ-E

PCW

Respondent Shel-Jenn, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38946

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103962651

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 213.4(k) and WPAP 11-03090501 Standard Conditions No. 6

Violation Description

Failed to maintain temporary erosion and sedimentation best management practices. Specifically, the silt fence located downgradient of the intersection of Caprock Canyon and Hidden Springs was in disrepair and needed maintenance. Heavy rains caused erosion and sedimentation to accumulate, but not leave the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 5%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or the environment.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

72 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$125

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

Notes

The Respondent returned to compliance on December 8, 2009.

Violation Subtotal \$375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10

Violation Final Penalty Total \$400

This violation Final Assessed Penalty (adjusted for limits) \$400

Economic Benefit Worksheet

Respondent: Shel-Jenn, Inc.
Case ID No.: 38946
Reg. Ent. Reference No.: RN103952651
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
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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	\$600	28-Sep-2009	8-Dec-2009	0.19	\$6	n/a	\$6
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$400	28-Sep-2009	8-Dec-2009	0.19	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to repair the silt fence and to remove sediment downgradient of the silt fence. Date required is the date of the investigation. 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

\$1,000

TOTAL

\$10

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602994352	SHEL-JENN, INC.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN103952651	HERITAGE OAKS SUBDIVISION SECTION ONE	Classification:	Site Rating:
ID Number(s):	EDWARDS AQUIFER		REGISTRATION	11-03090501A
	EDWARDS AQUIFER		REGISTRATION	11-03090501
Location:	On Shell Road 0.5 mile east of Farm-to-Market 2338 in Georgetown, Williamson County, Texas			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	January 08, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 08, 2005 to January 08, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cheryl Thompson	Phone:	(817) 588-5886	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/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. N/A

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.)

1	11/30/2006	(519014)	
2	02/26/2008	(616780)	
3	12/11/2009	(778680)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 12/01/2006 (519014)			
Self	NO	Classification:	Minor
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)			
Description: Failure to have approval letter on site.			
Self	NO	Classification:	Minor
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)			
Description: Failure to maintain a copy of the approved WPAP on site.			
Self	NO	Classification:	Minor
Citation: 30 TAC Chapter 213, SubChapter A 213.4(g)(1)(A)			
Description: Deed Recordation not on file.			
Self	NO	Classification:	Minor
Citation: 30 TAC Chapter 213, SubChapter A 213.5(c)(3)(D)			
Description: Failure to submit required 30 day sewer line certification testing.			
Self	NO	Classification:	Minor
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)			
Description: Sediment not removed from rock berms			
- 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
SHEL-JENN, INC.
RN103952651**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-0067-EAQ-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 Shel-Jenn, Inc. ("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 single-family residential construction site on Shell Road 0.5 mile east of Farm-to-Market Road 2338 in Georgetown, Williamson County, Texas (the "Site").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
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 16, 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 Three Thousand Five Hundred Fifty Dollars (\$3,550) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Eight Hundred Forty Dollars (\$2,840)

of the administrative penalty and Seven Hundred Ten Dollars (\$710) 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 on December 8, 2009, the Respondent submitted documentation showing that the silt fence was repaired and the sediment accumulations downgradient were removed.
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 obtain approval of a modification to a Water Pollution Abatement Plan ("WPAP") prior to constructing the modification, in violation of 30 TEX. ADMIN. CODE § 213.4(j) and WPAP 11-03090501 Standard Conditions No. 4, as documented during an investigation conducted on September 28, 2009. Specifically, the water quality pond was not constructed in accordance with the approved WPAP. The WPAP depicts Lot 52 and Lot 51 separated by a portion of the water quality pond, but the pond as built does not separate the lots. Also, the water quality pond failed to contain the required water volume.
2. Failed to maintain temporary erosion and sedimentation best management practices, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and WPAP 11-03090501 Standard Conditions No. 6, as documented during an investigation conducted on September 28, 2009. Specifically, the silt fence located downgradient of the intersection of Caprock Canyon and Hidden Springs was in disrepair and needed maintenance. Heavy rains caused erosion and sedimentation to accumulate, but not leave the Site.

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: Shel-Jenn, Inc., Docket No. 2010-0067-EAQ-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, submit a complete WPAP modification application to the TCEQ Austin Regional Office for the modifications that were constructed on the water quality pond; and
 - b. Within 60 days after the effective date of this Agreed Order, submit written certification that modification to WPAP 11-03090501 has been obtained as described below. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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.
7. 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.
8. 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



For the Executive Director

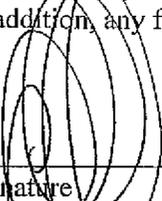
6/10/2010
Date

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

2/9/10
Date

JAMES H. JACOBS

Name (Printed or typed)
Authorized Representative of
Shel-Jenn, Inc.

PRESIDENT

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 I of this Agreed Order.

