

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2010-0652-WQ-E **TCEQ ID:** RN105900476 **CASE NO.:** 39568
RESPONDENT NAME: Ross Construction, 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"/> IMMEDIATE 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: Cap Rock Crystal Falls, The Fairways Crystal, Crystal Falls Parkway west of Lakeline Boulevard, Leander, Williamson County</p> <p>TYPE OF OPERATION: Construction site</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on February 18, 2010, alleging that a home builder on the Site was excavating and clearing without using a silt fence and tracking sediment throughout the Site. 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 August 2, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Martha Hott, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2587; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Ned Ross, President, Ross Construction, Inc., Post Office Box 93188, Austin, Texas 78709 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: February 18, 2010</p> <p>Date of Investigation Relating to this Case: March 12, 2010</p> <p>Date of NOV/NOE Relating to this Case: April 7, 2010 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to obtain authorization to discharge storm water associated with construction activities. Specifically, the Respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR150000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p>Total Assessed: \$750</p> <p>Total Deferred: \$150 <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: \$600</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 by March 26, 2010, the Respondent has implemented the following corrective measures at the Site:</p> <p>a. Developed and implemented a storm water pollution prevention plan for the Site; and</p> <p>b. Obtained authorization to discharge storm water associated with construction activities under TPDES CGP No. TXR15PN83.</p>

Additional ID No(s): TXR15PN83



Penalty Calculation Worksheet (PCW)

DATES	Assigned PCW	12-Apr-2010	Screening	26-Apr-2010	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	Ross Construction, Inc.
Reg. Ent. Ref. No.	RN105900476
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39568	No. of Violations	1
Docket No.	2010-D652-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Marty Hott
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7
		\$0

Notes: No adjustment due to compliance history.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$250
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Economic Benefit	0.0% Enhancement	Subtotal 6	\$0
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Total EB Amounts \$4 *
Approx. Cost of Compliance \$2,000 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$750

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$750
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DEFERRAL	20.0% Reduction	Adjustment	-\$150
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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	\$600
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Screening Date 26-Apr-2010

Docket No. 2010-0652-WQ-E

PCW

Respondent Ross Construction, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39568

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105900476

Media [Statute] Water Quality

Enf. Coordinator Marty Hott

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

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 26-Apr-2010

Docket No. 2010-0652-WQ-E

PCW

Respondent Ross Construction, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39568

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105900476

Media [Statute] Water Quality

Enf. Coordinator Marty Hott

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)

Violation Description

Failed to obtain authorization to discharge storm water associated with construction activities, as documented during an investigation conducted on March 12, 2010. Specifically, the Respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit No. TXR150000.

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 1

14 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One monthly event is recommended from the investigation date (March 12, 2010) to the compliance date (March 26, 2010).

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes: The Respondent came back into compliance by March 26, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent Ross Construction, Inc.
Case ID No. 39568
Reg. Ent. Reference No. RN105900476
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
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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	\$2,000	12-Mar-2010	26-Mar-2010	0.04	\$4	n/a	\$4
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a Notice of Intent permitting the Respondent to discharge storm water associated with construction activities and to develop and implement a storm water pollution prevention plan. Date required is the date the violation was initially documented. Final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$4

Compliance History Report

Customer/Respondent/Owner-Operator: CN602548737 Ross Construction, Inc. Classification: AVERAGE Rating: 4.69
Regulated Entity: RN105900476 CAP ROCK CRYSTAL FALLS THE FAIRWAYS CRYSTAL Classification: Site Rating:
ID Number(s): STORMWATER PERMIT TXR15PN83
Location: CRYSTAL FALLS PARKWAY WEST OF LAKE LINE BOULEVARD, WILLIAMSON COUNTY, TEXAS
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: April 22, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 22, 2005 to April 22, 2010

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

Name: Marty Hott Phone: 512 - 239 - 2587

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.)
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
ROSS CONSTRUCTION, INC.
RN105900476

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2010-0652-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 Ross Construction, 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 operates a construction site located on Crystal Falls Parkway, west of Lakeline Boulevard in Williamson 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 April 12, 2010.
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 Seven Hundred Fifty Dollars (\$750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Dollars (\$600) of the administrative penalty and One Hundred Fifty Dollars

- (\$150) 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 March 26, 2010, the Respondent has implemented the following corrective measures at the Site:
 - a. Developed and implemented a storm water pollution prevention plan for the Site; and
 - b. Obtained authorization to discharge storm water associated with construction activities under Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15PN83.
 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 operator of the Site, the Respondent is alleged to have failed to obtain authorization to discharge storm water associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on March 12, 2010. Specifically, the Respondent was performing construction activities prior to obtaining authorization under TPDES CGP No. TXR150000.

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: Ross Construction, Inc., Docket No. 2010-0652-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 under this Agreed Order.
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 Zrellin
For the Executive Director

7/19/2010
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.

Ned Ross - Pres
Signature

5/20/10
Date

Ned Ross
Name (Printed or typed)
Authorized Representative of
Ross Construction, 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 1 of this Agreed Order.