

**Executive Summary – Enforcement Matter – Case No. 41098  
Austin Trinity School and Flynn Construction Incorporated  
RN102733870  
Docket No. 2011-0247-MLM-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MLM, EAQ, WQ

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Trinity Episcopal School, 3901 Bee Cave Road in West Lake Hills, Travis County

**Type of Operation:**

Construction site for a proposed school

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** May 6, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$6,545

**Amount Deferred for Expedited Settlement:** \$1,309

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$5,236

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** Yes (EAQ), No (WQ)

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41098  
Austin Trinity School and Flynn Construction Incorporated  
RN102733870  
Docket No. 2011-0247-MLM-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** September 20, 2010

**Date(s) of NOE(s):** December 23, 2010

***Violation Information***

1. Failed to immediately suspend regulated activity after discovering sensitive features during construction until the Executive Director has reviewed and approved the methods proposed to protect the features and the Edwards Aquifer from potentially adverse impacts to water quality. Specifically, Piers B-6 and C-6, which intersected with geologic feature NF2, and Pier J-2.6, which intersected with geologic feature NF1, were drilled and the concrete poured which caused concrete and concrete tailings to enter the sensitive features [30 TEX. ADMIN. CODE § 213.4(k) and 213.5(f)(2) and Water Pollution Abatement Plan No. 11-10030101 Standard Conditions Nos. 8 and 10].
2. Failed to prevent unauthorized discharges into or adjacent to any water in the state. Specifically, sediment from the construction site, concrete tailings from the pier drilling, and debris from site clearing had discharged into Eanes Creek along the southwest border of the Site due to the failure of temporary erosion and sedimentation controls [TEX. WATER CODE § 26.121(a)(2), 30 TEX. ADMIN CODE § 305.125(1), and Texas Pollutant Discharge Elimination System (“TPDES”) General Permit Nos. TXR15PS59 and TXR15PS72, Part II, Section C.2 and Part III, Section F.6(a)].
3. Failed to post a construction site notice at the Site in a location where it is readily available for viewing [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit Nos. TXR15PS59 and TXR15PS72, Part II, Section E.3(d) and Part III, Section D.2].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Executive Director recognizes that the Respondents have implemented the following corrective measures:

- a. By September 30, 2010, posted a construction site notice at the Site;
- b. By September 30, 2010, repaired damaged silt fence and installed additional sediment controls, including an additional row of silt fence along the top of the slope to Eanes Creek and a sedimentation basin along the southwest portion of the Site in order to address erosion and sedimentation issues;
- c. By October 1, 2010, removed concrete tailings from geologic features NF1 and NF2;

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RN102733870  
Docket No. 2011-0247-MLM-E**

d. On October 1, 2010, received approval from the TCEQ of a plan to protect geologic features NF1 and NF2; and

e. By October 25, 2010, removed the discharged sediment, concrete tailings, and debris from Eanes Creek.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**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

**TCEQ SEP Coordinator:** N/A

**Respondent:** Mr. Gary F. Miller, Vice President, Flynn Construction Incorporated, 4638 South Lamar Boulevard, Austin, Texas 78745

Mr. Bryan Denney, CFO, Austin Trinity School, 3901 Bee Cave Road, West Lake Hills, Texas 78746

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	28-Jan-2011	<b>Screening</b>	28-Jan-2011	<b>EPA Due</b>	
	<b>PCW</b>	28-Jan-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Austin Trinity School and Flynn Construction Incorporated
<b>Reg. Ent. Ref. No.</b>	RN102733870
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	41098	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0247-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Water Quality	<b>Enf. Coordinator</b>	Marty Hott
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$50
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Notes: Enhancement for one NOV with dissimilar violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$625
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$8  
 Approx. Cost of Compliance \$5,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,925
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$1,925
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,925
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$385
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$1,540
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Screening Date 28-Jan-2011

Docket No. 2011-0247-MLM-E

PCW

Respondent Austin Trinity School and Flynn Construction Incorporated

Policy Revision 2 (September 2002)

Case ID No. 41098

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102733870

Media [Statute] Edwards Aquifer

Enf. Coordinator Marty Hott

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <i>number of judgments or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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)** 2%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations.

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

Screening Date 28-Jan-2011

Docket No. 2011-0247-MLM-E

PCW

Respondent Austin Trinity School and Flynn Construction Incorporated

Policy Revision 2 (September 2002)

Case ID No. 41098

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102733870

Media [Statute] Edwards Aquifer

Enf. Coordinator Marty Hott

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and 213.5(f)(2) and Water Pollution Abatement Plan No. 11-10030101 Standard Conditions Nos. 8 and 10

Violation Description

Failed to immediately suspend regulated activity after discovering sensitive features during construction until the Executive Director has reviewed and approved the methods proposed to protect the features and the Edwards Aquifer from potentially adverse impacts to water quality, as documented during an investigation conducted on September 20, 2010. Specifically, Piers B-6 and C-6, which intersected with geologic feature NF2, and Pier J-2.6, which intersected with geologic feature NF1, were drilled and the concrete poured which caused concrete and concrete tailings to enter the sensitive features.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

11 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended from the investigation date (September 20, 2010) to the compliance date (October 1, 2010).

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondents achieved compliance by October 1, 2010.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$1,925

This violation Final Assessed Penalty (adjusted for limits) \$1,925

# Economic Benefit Worksheet

**Respondent** Austin Trinity School and Flynn Construction Incorporated  
**Case ID No.** 41098  
**Req. Ent. Reference No.** RN102733870  
**Media** Edwards Aquifer  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$2,500	20-Sep-2010	1-Oct-2010	0.03	\$4	n/a	\$4
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$2,500	20-Sep-2010	1-Oct-2010	0.03	\$4	n/a	\$4

**Notes for DELAYED costs**

Estimated cost to remove concrete tailings from geologic features NF1 and NF2 and to submit a plan to protect geologic features NF1 and NF2. Date required is the date of the investigation and 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

\$5,000

**TOTAL**

\$8



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	28-Jan-2011	<b>Screening</b>	28-Jan-2011	<b>EPA Due</b>	
	<b>PCW</b>	28-Jan-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Austin Trinity School and Flynn Construction Incorporated		
<b>Reg. Ent. Ref. No.</b>	RN102733870		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41098	<b>No. of Violations</b>	2
<b>Docket No.</b>	2011-0247-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Edwards Aquifer	<b>Enf. Coordinator</b>	Marty Hott
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$6,000
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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.

<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$120
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Notes: Enhancement for one NOV with dissimilar violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$1,500
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$43
Approx. Cost of Compliance	\$21,025

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,620
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$4,620
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,620
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$924
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$3,696
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**Screening Date** 28-Jan-2011

**Docket No.** 2011-0247-MLM-E

**PCW**

**Respondent** Austin Trinity School and Flynn Construction Incorporated

Policy Revision 2 (September 2002)

**Case ID No.** 41098

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102733870

**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 notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 2%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with dissimilar violations.

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

Screening Date 28-Jan-2011

Docket No. 2011-0247-MLM-E

PCW

Respondent Austin Trinity School and Flynn Construction Incorporated

Policy Revision 2 (September 2002)

Case ID No. 41098

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102733870

Media [Statute] Water Quality

Enf. Coordinator Marty Hott

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(2), 30 Tex. Admin Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit Nos. TXR15PS59 and TXR15PS72, Part II, Section C.2 and Part III, Section F.6(a)

Violation Description

Failed to prevent unauthorized discharges into or adjacent to any water in the state, as documented during an investigation conducted on September 20, 2010. Specifically, sediment from the construction site, concrete tailings from the pier drilling, and debris from site clearing had discharged into Eanes Creek along the southwest border of the Site due to the failure of temporary erosion and sedimentation controls.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 35

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

Two monthly events are recommended from the investigation date (September 20, 2010) to the compliance date (October 25, 2010).

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes

The Respondents achieved compliance by October 25, 2010.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$43

Violation Final Penalty Total \$3,850

This violation Final Assessed Penalty (adjusted for limits) \$3,850

# Economic Benefit Worksheet

**Respondent** Austin Trinity School and Flynn Construction Incorporated  
**Case ID No.** 41098  
**Reg. Ent. Reference No.** RN102733870  
**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	Overtime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$20,000	20-Sep-2010	30-Sep-2010	0.03	\$2	\$37	\$38
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	\$1,000	20-Sep-2010	25-Oct-2010	0.10	\$5	n/a	\$5
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair the damaged silt fence and to install additional sediment controls, including an additional row of silt fence and a sedimentation basin. Estimated cost to remove the discharged sediment, concrete tailings from the pier drilling, and debris from the site clearing. Date required is the date of the investigation and the final date is the date the corrective actions were completed.

### 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

\$21,000

**TOTAL**

\$43

Screening Date 28-Jan-2011

Docket No. 2011-0247-MLM-E

PCW

Respondent Austin Trinity School and Flynn Construction Incorporated

Policy Revision 2 (September 2002)

Case ID No. 41098

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102733870

Media [Statute] Water Quality

Enf. Coordinator Marty Hott

Violation Number 2

Rule Cite(s)

30 Tex. Admin Code § 305.125(1) and TPDES General Permit Nos. TXR15PS59 and TXR15PS72, Part II, Section E.3(d) and Part III, Section D.2

Violation Description

Failed to post a construction site notice at the Site in a location where it is readily available for viewing, as documented during an investigation conducted on September 20, 2010.

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

10 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One monthly event is recommended from the investigation date (September 20, 2010) to the compliance date (September 30, 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 Respondents achieved compliance by September 30, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$770

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

# Economic Benefit Worksheet

**Respondent** Austin Trinity School and Flynn Construction Incorporated  
**Case ID No.** 41098  
**Req. Ent. Reference No.** RN102733870  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$25	20-Sep-2010	30-Sep-2010	0.03	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs** Estimated cost to post a construction site notice at the Site. Date required is the date of the investigation and 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	\$25	<b>TOTAL</b>	\$0
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# Compliance History

Customer/Respondent/Owner-Operator: CN603691833 Austin Trinity School Classification: AVERAGE Rating: 1.50

Regulated Entity: RN102733870 TRINITY EPISCOPAL SCHOOL Classification: AVERAGE Site Rating: 1.50

ID Number(s):

STORMWATER	PERMIT	TXR15PS59
STORMWATER	PERMIT	TXR15PS72
EDWARDS AQUIFER	REGISTRATION	11-00011101
EDWARDS AQUIFER	REGISTRATION	11-10030102
EDWARDS AQUIFER	REGISTRATION	11-10030102
EDWARDS AQUIFER	REGISTRATION	11-01061901
EDWARDS AQUIFER	REGISTRATION	11-03020502
EDWARDS AQUIFER	REGISTRATION	11-98062902A
EDWARDS AQUIFER	REGISTRATION	11-98062902B
EDWARDS AQUIFER	REGISTRATION	11-98062902A
EDWARDS AQUIFER	REGISTRATION	11-98062902B
EDWARDS AQUIFER	REGISTRATION	11-98062902
EDWARDS AQUIFER	REGISTRATION	11-00011101
EDWARDS AQUIFER	REGISTRATION	11-10030101
EDWARDS AQUIFER	REGISTRATION	11-10030102

Location: 3901 BEE CAVE ROAD, WEST LAKE HILLS, TRAVIS COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: February 14, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 14, 2006 to February 14, 2011

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? 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. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

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

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

N/A
- C. Chronic excessive emissions events.
 

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

1	04/26/10	(795338)
2	09/01/10	(857398)
3	12/23/10	(864000)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date: 04/27/2010	(795338)
Self	NO
Classification:	Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

Description: Failure to inspect and maintain BMPs.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# Compliance History

Customer/Respondent/Owner-Operator: CN602849671 Flynn Construction Incorporated Classification: AVERAGE Rating: 2.87

Regulated Entity: RN102733870 TRINITY EPISCOPAL SCHOOL Classification: AVERAGE Site Rating: 1.50

ID Number(s):

STORMWATER	PERMIT	TXR15PS59
STORMWATER	PERMIT	TXR15PS72
EDWARDS AQUIFER	REGISTRATION	11-00011101
EDWARDS AQUIFER	REGISTRATION	11-10030101
EDWARDS AQUIFER	REGISTRATION	11-10030102
EDWARDS AQUIFER	REGISTRATION	11-01061901
EDWARDS AQUIFER	REGISTRATION	11-03020502
EDWARDS AQUIFER	REGISTRATION	11-98062902A
EDWARDS AQUIFER	REGISTRATION	11-98062902B
EDWARDS AQUIFER	REGISTRATION	11-98062902A
EDWARDS AQUIFER	REGISTRATION	11-98062902B
EDWARDS AQUIFER	REGISTRATION	11-98062902
EDWARDS AQUIFER	REGISTRATION	11-00011101
EDWARDS AQUIFER	REGISTRATION	11-10030101
EDWARDS AQUIFER	REGISTRATION	11-10030102

Location: 3901 BEE CAVE ROAD, WEST LAKE HILLS, TRAVIS COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: February 14, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 14, 2006 to February 14, 2011

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? 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. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

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

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

N/A
- C. Chronic excessive emissions events.
 

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

1	04/26/10	(795338)
2	12/23/10	(864000)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	04/27/2010	(795338)
Self	NO	Classification: Moderate
Citation:	30 TAC Chapter 213, SubChapter A 213.4(k)	
Description:	Failure to inspect and maintain BMPs.	

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  
AUSTIN TRINITY SCHOOL AND  
FLYNN CONSTRUCTION  
INCORPORATED  
RN102733870**

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

## **AGREED ORDER DOCKET NO. 2011-0247-MLM-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 Austin Trinity School and Flynn Construction Incorporated ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. Austin Trinity School owns and Flynn Construction Incorporated operates a construction site for a proposed school located at 3901 Bee Cave Road in West Lake Hills, Travis County, Texas (the "Site").
2. The Respondents have caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about December 28, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Six Thousand Five Hundred Forty-Five Dollars (\$6,545) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Five Thousand Two Hundred Thirty-Six Dollars (\$5,236) of the administrative penalty and One Thousand Three Hundred Nine Dollars (\$1,309) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondents have implemented the following corrective measures:
  - a. By September 30, 2010, posted a construction site notice at the Site;
  - b. By September 30, 2010, repaired damaged silt fence and installed additional sediment controls, including an additional row of silt fence along the top of the slope to Eanes Creek and a sedimentation basin along the southwest portion of the Site in order to address erosion and sedimentation issues;
  - c. By October 1, 2010, removed concrete tailings from geologic features NF1 and NF2;
  - d. On October 1, 2010, received approval from the TCEQ of a plan to protect geologic features NF1 and NF2; and
  - e. By October 25, 2010, removed the discharged sediment, concrete tailings, and debris from Eanes Creek.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Site, the Respondents are alleged to have:

1. Failed to immediately suspend regulated activity after discovering sensitive features during construction until the Executive Director has reviewed and approved the methods proposed to protect the features and the Edwards Aquifer from potentially adverse impacts to water quality, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and 213.5(f)(2) and Water Pollution Abatement Plan No. 11-10030101 Standard Conditions Nos. 8 and 10, as documented during an investigation conducted on September 20, 2010. Specifically, Piers B-6 and C-6, which intersected with geologic feature NF2, and Pier J-2.6, which intersected with geologic feature NF1, were drilled and the concrete poured which caused concrete and concrete tailings to enter the sensitive features.
2. Failed to prevent unauthorized discharges into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(2), 30 TEX. ADMIN CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit Nos. TXR15PS59 and TXR15PS72, Part II, Section C.2 and Part III, Section F.6(a), as documented during an investigation conducted on September 20, 2010. Specifically, sediment from the construction site, concrete tailings from the pier drilling, and debris from site clearing had discharged into Eanes Creek along the southwest border of the Site due to the failure of temporary erosion and sedimentation controls.
3. Failed to post a construction site notice at the Site in a location where it is readily available for viewing, in violation of 30 TEX. ADMIN CODE § 305.125(1) and TPDES General Permit Nos. TXR15PS59 and TXR15PS72, Part II, Section E.3(d) and Part III, Section D.2, as documented during an investigation conducted on September 20, 2010.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Austin Trinity School and Flynn Construction Incorporated, Docket No. 2011-0247-MLM-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
5. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
6. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Berlin  
For the Executive Director

5/12/2011  
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.

Bryan Denney  
Signature

3/30/11  
Date

Bryan Denney  
Name (Printed or typed)  
Authorized Representative of  
Austin Trinity School

CFO  
Title

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

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

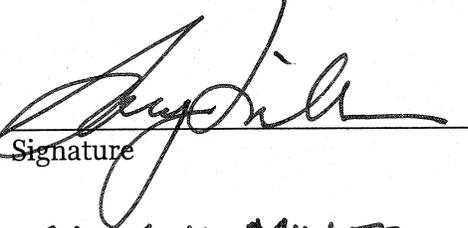
5/12/2011  
\_\_\_\_\_  
Date

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

3/30/11  
\_\_\_\_\_  
Date

GARY F. MILLER  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Flynn Construction Incorporated

VICE 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.