

LGI LAND, LLC
RN105567705
Docket No. 2013-2128-MLM-E

Order Type:

Default Order

Media:

MLM - WQ and WR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

on Benders Landing Boulevard and Riley Fuzzel Road, Spring, Montgomery County

Type of Operation:

residential development site

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date:	November 7, 2014
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Comments Received:	None
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Penalty Information

Total Penalty Assessed:	\$32,750
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Total Paid to General Revenue:	\$0
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Total Due to General Revenue:	\$32,750
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Compliance History Classifications:

Person/CN –Unclassified
Site/RN – Unclassified

Major Source:	No
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Statutory Limit Adjustment:	None
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Applicable Penalty Policy:	September 2011
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LGI LAND, LLC
RN105567705
Docket No. 2013-2128-MLM-E

Investigation Information

Complaint Date(s): February 28, 2012
Complaint Information: Alleged turbid discharge entering Spring Creek near the intersection of the West Fork of the San Jacinto River that appears to be associated with the Bender's Landing development.

Date(s) of Investigation: February 29, 2012 through September 6, 2013

Date(s) of NOV(s): N/A

Date(s) of NOE(s): October 29, 2013

Violation Information

1. Failed to obtain authorization prior to diverting state water [TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11].
2. Failed to obtain authorization prior to impounding state water [TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11].
3. Failed to prevent the unauthorized discharge of sediment into or adjacent to waters in the state due to the failure to implement/maintain best management practices ("BMPs") [TEX. WATER CODE § 26.121(a); 30 TEX. ADMIN. CODE § 305.125(1); and Texas Pollutant Discharge and Elimination System Construction General Permit TX15LL16 Part III, Section F(6)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
Submitted documentation on March 16, 2012, to demonstrate that BMPs had been installed and were being maintained.

Technical Requirements:

1. Immediately cease the unauthorized diversion, impounding and/or use of state water until such time that authorization has been obtained.
2. Within 30 days submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: August 29, 2014
Date Green Card(s) Signed: September 2, 2014
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Lanae Foard, Enforcement Division, (512) 239-2554

TCEQ Regional Contact: Steve Smith, Houston Regional Office, (713) 767-3500

Respondent Contact: Thomas Lipar, Member, LGI LAND, LLC, 1450 Lake Robbins Drive, Suite 430, The Woodlands, Texas 77380

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	4-Nov-2013		
	PCW	16-Oct-2014	Screening	18-Nov-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	LGI LAND, LLC		
Reg. Ent. Ref. No.	RN105567705		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	47983	No. of Violations	2
Docket No.	2013-2128-MLM-E	Order Type	1660
Media Program(s)	Water Rights	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$10,500

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 for compliance history.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts	\$2,340
Approx. Cost of Compliance	\$20,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$10,500

OTHER FACTORS AS JUSTICE MAY REQUIRE 200.0% **Adjustment** \$21,000

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: A 200% enhancement was added because the diversion occurred during moderate drought conditions (average U.S. Drought Monitor Level D1).

Final Penalty Amount \$31,500

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$31,500

DEFERRAL 0.0% Reduction **Adjustment** \$0

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY \$31,500

Screening Date 18-Nov-2013

Docket No. 2013-2128-MLM-E

PCW

Respondent LGI LAND, LLC

Policy Revision 3 (September 2011)

Case ID No. 47983

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105567705

Media [Statute] Water Rights

Enf. Coordinator Lanae Foard

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	0	0%
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)

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

Adjustment Percentage (Subtotal 3)

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

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date	18-Nov-2013	Docket No.	2013-2128-MLM-E	PCW
Respondent	LGI LAND, LLC			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	47983			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN105567705			
Media [Statute]	Water Rights			
Enf. Coordinator	Lanae Foard			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="0.0%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>		<input type="text"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="5.0%"/>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LGI LAND, LLC
Case ID No. 47983
Reg. Ent. Reference No. RN105567705
Media Violation No. Water Rights
 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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	29-Feb-2012	2-Jul-2014	2.34	\$1,170	n/a	\$1,170

Notes for DELAYED costs

Cease the unauthorized diversion of state water from Tantrough Gully and several other unnamed tributaries of the West Fork of the San Jacinto River and Spring Creek. Date required is the date the violation was documented. Final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$10,000	TOTAL	\$1,170
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Screening Date	18-Nov-2013	Docket No.	2013-2128-MLM-E	PCW
Respondent	LGI LAND, LLC			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	47983			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN105567705			
Media [Statute]	Water Rights			
Enf. Coordinator	Lanae Foard			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="0.0%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="5.0%"/>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LGI LAND, LLC
Case ID No. 47983
Reg. Ent. Reference No. RN105567705
Media Violation No. Water Rights
 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)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	29-Feb-2012	2-Jul-2014	2.34	\$1,170	n/a	\$1,170

Notes for DELAYED costs
 Cease the unauthorized impoundment of state water in the eight stormwater retention lakes constructed in the Benders Landing and Benders Landing Estates subdivisions. Date required is the date the violation was documented. Final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$10,000	TOTAL	\$1,170
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Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	4-Nov-2013	Screening	18-Nov-2013	EPA Due	
	PCW	4-Dec-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	LGI LAND, LLC		
Reg. Ent. Ref. No.	RN105567705		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	47983	No. of Violations	1
Docket No.	2013-2128-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Water Rights	Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

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 Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date	18-Nov-2013	Docket No.	2013-2128-MLM-E	PCW
Respondent	LGI LAND, LLC			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	47983			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN105567705			
Media [Statute]	Water Quality			
Enf. Coordinator	Lanae Foard			

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	0	0%
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)

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

Adjustment Percentage (Subtotal 3)

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

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date	18-Nov-2013	Docket No.	2013-2128-MLM-E	PCW
Respondent	LGI LAND, LLC			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	47983			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN105567705			
Media [Statute]	Water Quality			
Enf. Coordinator	Lanae Foard			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	Percent <input type="text" value="5.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark w th x)	
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LGI LAND, LLC
Case ID No. 47983
Reg. Ent. Reference No. RN105567705
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	29-Feb-2012	16-Mar-2012	0.04	\$2	n/a	\$2

Notes for DELAYED costs Estimated cost to install and maintain BMPs at the Site. Date required is the date the violation was 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 \$1,000

TOTAL \$2

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN603333790, RN105567705, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603333790, LGI LAND, LLC

Classification: UNCLASSIFIED **Rating:** -----

Regulated Entity: RN105567705, LGI Land Benders Landing Estates

Classification: UNCLASSIFIED **Rating:** -----

Complexity Points: 4

Repeat Violator: NO

CH Group: 14 - Other

Location: AT BENDERS LANDING AND RILEY FUZZELL ROAD, SPRING, MONTGOMERY COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: January 08, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 08, 2009 to January 08, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Lanae Foard

Phone: (512) 239-2554

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LGI LAND, LLC;
RN105567705**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-2128-MLM-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7, 11, and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is LGI LAND, LLC ("Respondent").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent owns and operates a residential development site located on Benders Landing Boulevard and Riley Fuzzel Road in Spring, Montgomery County, Texas (the "Site"). The Site adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 26.001(5), TEX. WATER CODE § 11.021, and 30 TEX. ADMIN. CODE § 297.1(50).
2. During an investigation conducted on February 29, 2012 through September 6, 2013, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. Failed to obtain authorization prior to impounding, diverting, or using state water. Specifically, Respondent, was diverting state water from Tantrough Gully and several other unnamed tributaries of the West fork of the San Jacinto River and Spring Creek without authorization; and
 - b. Failed to obtain authorization prior to impounding, diverting, or using state water. Specifically, Respondent, was impounding state water in eight unpermitted lakes constructed on channel in Benders Landing and Benders Landing Estates subdivisions; and
 - c. Failed to prevent the unauthorized discharge of sediment into or adjacent to waters in the state due to the failure to implement/maintain best management practices ("BMPs"). Specifically, stormwater was being pumped off-site through an area of the construction site located off Lazy Meadow Drive, and the BMPs at the discharge point were failing. In addition, sample results of the turbid discharge indicated elevated levels of total dissolved solids and total suspended solids.
3. The Executive Director recognizes that Respondent, on March 16, 2012, submitted documentation to demonstrate that BMPs had been installed and were being maintained, in accordance with 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Construction General Permit TX15LL16.

4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of LGI LAND, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on August 29, 2014.
5. By letter dated August 29, 2014, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on September 2, 2014, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 11 and 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to obtain authorization prior to diverting state water, in violation of TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to obtain authorization prior to impounding state water, in violation of TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to prevent the unauthorized discharge of sediment into or adjacent to waters in the state due to the failure to implement/maintain BMPs, in violation of TEX. WATER CODE § 26.121(a); 30 TEX. ADMIN. CODE § 305.125(1); and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit TX15LL16 Part III, Section F(6).
5. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE §§ 7.055 and 11.0842 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
6. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE §§ 7.056 and 11.0842 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE §§ 7.057 and 11.0842 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE §§ 7.051 and 11.0842, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of thirty-two thousand seven hundred fifty dollars (\$32,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE §§ 7.053 and 11.0842(c).
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of thirty-two thousand seven hundred fifty dollars (\$32,750.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: LGI LAND, LLC; Docket No. 2013-2128-MLM-E" to:

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

3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall cease the unauthorized diversion, impounding and/or use of state water until such time that authorization has been obtained, in accordance with 30 TEX. ADMIN. CODE ch. 297; and
 - b. Within 30 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Steve Smith, Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5424 Polk Avenue, Suite H
Houston, Texas 77023-1486

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed in Ordering Provision No. 3.b., above.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

STATE OF TEXAS

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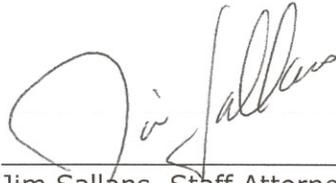
COUNTY OF TRAVIS

"My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of LGI LAND, LLC" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 29, 2014.

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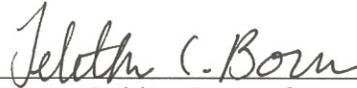
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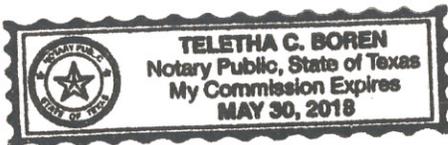
Jim Sallans, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Subscribed and sworn to before me on this 16th day of October, A.D. 2014.



Notary Public, State of Texas



Notary without Bond