

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 45503
Austin Equipment Company, LC
RN104543780
Docket No. 2012-2360-EAQ-E

Order Type:

Agreed Order

Media:

Edwards Aquifer

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

501 County Road 344, Jarrell, Williamson County

Type of Operation:

stone quarry

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: July 4, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$50,700

Total Paid to General Revenue: \$1,700

Total Due to General Revenue: \$49,000

Payment Plan: 35 monthly payments of \$1,400 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Unsatisfactory
Site/RN – N/A

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002 (PCW 1); September 2011 (PCW 2)

Austin Equipment Company, LC

RN104543780

Docket No. 2012-2360-EAQ-E

Investigation Information

Complaint Date(s): January 5, 2012
Complaint Information: Alleged that runoff from the Site was entering Salado Creek, causing the water to be muddy and turbid.

Date(s) of Investigation: August 14, 2012

Date(s) of NOV(s): April 2, 2012

Date(s) of NOE(s): September 10, 2012

Violation Information

1. Failed to pave the entrance road to the Site as prescribed in the water pollution abatement plan ("WPAP") [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer ("EA") WPAP No. 11-05022201D Special Condition No. IV].
2. Failed to complete construction of the water quality basins as designed by the date prescribed in the WPAP [30 TEX. ADMIN. CODE § 213.4(k) and EA WPAP No. 11-05022201D Special Condition No. VII].
3. Failed to install soil liners for the holding ponds according to the specifications in the WPAP and submit certification from a Texas licensed professional engineer that the soils forming the bottom and sides of the holding ponds were installed according to approved specifications [30 TEX. ADMIN. CODE § 213.4(k) and EA WPAP No. 11-05022201D Special Condition No. V].
4. Failed to control drainage areas as specified in the WPAP [30 TEX. ADMIN. CODE § 213.4(k) and EA WPAP No. 11-05022201D Special Condition No. VI].
5. Failed to complete construction of the water quality basins as designed by the date prescribed in the WPAP [30 TEX. ADMIN. CODE § 213.4(k) and EA WPAP No. 11-05022201D Special Condition No. VII].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Either:
 - a. Within 60 days:
 - i. Pave the entrance road to the Site; and
 - ii. Construct dikes in the key areas of the Site that meet the approved specifications.
 - b. Within 75 days submit written certification to demonstrate compliance with Technical Requirement No. 1.a.
 - c. Within 90 days:
 - i. Install soil liners for the holding ponds according to the specifications in the WPAP, and within 30 days after the installations are completed, submit certification from a Texas licensed professional engineer that the soils forming the bottom and sides of the holding ponds were installed according to the approved specifications; and
 - ii. Complete construction of the water quality basins in drainage areas ("DAs") 1, 2, 3, and 4 as designed.
 - d. Within 105 days submit written certification to demonstrate compliance with Technical Requirement No. 1.c.

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2. Or:
 - a. Within 60 days submit an administratively complete modification to EA WPAP No. 11-05022201D to reflect the current conditions of the Site, along with the associated application fee; and
 - b. Within 75 days submit written certification to demonstrate compliance with Technical Requirement No. 2.a.
3. Or:
 - a. Within 180 days, either transfer responsibility for maintaining best management practices at the Site to another entity, or close the Site in accordance with the WPAP; and
 - b. 195 days submit written certification to demonstrate compliance with Technical Requirement No. 3.a.

Litigation Information

Date Petition(s) Filed: May 6, 2013
Date Answer(s) Filed: July 2, 2013
SOAH Referral Date: August 8, 2013
Hearing Date(s):
Preliminary hearing: September 19, 2013 (waived)
Evidentiary hearing: March 28, 2014 (continued)
Settlement Date: April 26, 2014

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division, (817) 588-5886
TCEQ Regional Contact: Carolyn Runyon, Austin Regional Office, (512) 339-2929
Respondent: John Schuler, Director, Austin Equipment Company, LC, 1405 East Riverside Drive, Austin, Texas 78741
Respondent's Attorney: Duncan Norton, Lloyd Gosselink Rochelle and Townsend, P.C., 1405 East Riverside Drive, Austin, Texas 78741

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-Sep-2012		
	PCW	13-Dec-2012	Screening	26-Sep-2012
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Austin Equipment Company, LC		
Reg. Ent. Ref. No.	RN104543780		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	45503	No. of Violations	2
Docket No.	2012-2360-EAQ-E	Order Type	Findings
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephen Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	104.0%	Enhancement	Subtotals 2, 3, & 7	\$5,200
Notes	Enhancement for one NOV with same/similar violations, two orders containing denial of liability, two orders without denial of liability, and unsatisfactory performer classification; and a reduction for one notice of intended audit.			
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	\$2,758	*Capped at the Total EB \$ Amount		
Approx. Cost of Compliance	#NAME?			

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$10,200

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
	Final Penalty Amount \$10,200

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$10,200

DEFERRAL **Adjustment** \$0

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

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY \$10,200

Screening Date 26-Sep-2012

Docket No. 2012-2360-EAQ-E

PCW

Respondent Austin Equipment Company, LC

Policy Revision 2 (September 2002)

Case ID No. 45503

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104543780

Media [Statute] Edwards Aquifer

Enf. Coordinator Stephen Thompson

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>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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	2	50%
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>)	1	-1%
	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) 94%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, two orders containing denial of liability, two orders without denial of liability, and unsatisfactory performer classification; and a reduction for one notice of intended audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 104%

Screening Date	26-Sep-2012	Docket No.	2012-2360-EAQ-E	PCW
Respondent	Austin Equipment Company, LC			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	45503			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN104543780			
Media [Statute]	Edwards Aquifer			
Enf. Coordinator	Stephen Thompson			

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 11-05022201D Special Condition No. IV

Violation Description Failed to pave the entrance road to the Site as prescribed in the WPAP. Specifically, it was documented that the entrance road to the Site had not been paved by the due date of June 13, 2011.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	x	<input type="text"/>
				Percent <input type="text" value="25%"/>

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="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 the environment.

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	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended, calculated from the date of the record review, August 14, 2012, to the date of screening, September 26, 2012.

Good Faith Efforts to Comply

0.0% Reduction

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

Notes 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 Austin Equipment Company, LC
Case ID No. 45503
Reg. Ent. Reference No. RN104543780
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	\$20,000	13-Jun-2011	1-Jun-2013	1.97	\$131	\$2,626	\$2,758
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 The delayed costs include the estimated amount necessary to properly pave the entrance road to the Site, calculated from the date that construction was due to be completed to the estimated 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 \$20,000

TOTAL \$2,758

Screening Date	26-Sep-2012	Docket No.	2012-2360-EAQ-E	PCW
Respondent	Austin Equipment Company, LC			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	45503			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN104543780			
Media [Statute]	Edwards Aquifer			
Enf. Coordinator	Stephen Thompson			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

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 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"/>
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 Austin Equipment Company, LC
Case ID No. 45503
Reg. Ent. Reference No. RN104543780
Media Edwards Aquifer
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs for this violation are associated to Violation No. 3 in PCW Revision 3.

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

TOTAL



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

DATES	Assigned	17-Sep-2012	Screening	26-Sep-2012	EPA Due	
	PCW	13-Dec-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	Austin Equipment Company, LC		
Reg. Ent. Ref. No.	RN104543780		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	45503	No. of Violations	3
Docket No.	2012-2360-EAQ-E	Order Type	Findings
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephen Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$20,250
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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	100.0% Enhancement	Subtotals 2, 3, & 7	\$20,250
Notes	Enhancement for one NOV with same/similar violations, two orders containing denial of liability, two orders without denial of liability, and unsatisfactory performer classification; and a reduction for one notice of intended audit.		
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	\$5,777	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$60,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$40,500
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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 \$40,500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$40,500
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$40,500
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Screening Date 26-Sep-2012

Docket No. 2012-2360-EAQ-E

PCW

Respondent Austin Equipment Company, LC

Policy Revision 3 (September 2011)

Case ID No. 45503

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104543780

Media [Statute] Edwards Aquifer

Enf. Coordinator Stephen Thompson

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>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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	2	50%
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>)	1	-1%
	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) 94%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, two orders containing denial of liability, two orders without denial of liability, and unsatisfactory performer classification; and a reduction for one notice of intended audit.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 104%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 100%

Screening Date	26-Sep-2012	Docket No.	2012-2360-EAQ-E	PCW
Respondent	Austin Equipment Company, LC			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	45503			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN104543780			
Media [Statute]	Edwards Aquifer			
Enf. Coordinator	Stephen Thompson			

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 11-05022201D Special Condition No. V

Violation Description Failed to install soil liners for the holding ponds according to the specifications in the WPAP and submit certification from a Texas licensed professional engineer that the soils forming the bottom and sides of the holding ponds were installed according to approved specifications. Specifically, it was documented that the soil liners of the holding ponds did not meet the approved specifications.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="7.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	

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

Adjustment

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 type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

Violation Base Penalty

Three single events (one for each holding pond) are recommended.

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 type="text" value="x"/>	(mark with x)

Notes 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 Austin Equipment Company, LC
Case ID No. 45503
Reg. Ent. Reference No. RN104543780
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	\$50,000	2-Feb-2012	1-Jun-2013	1.33	\$221	\$4,429	\$4,651
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 The delayed costs include the estimated amount necessary to properly install soil liners for the three holding ponds at the Site, calculated from the date of the initial investigation to the estimated 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	\$50,000	TOTAL	\$4,651
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Screening Date 26-Sep-2012	Docket No. 2012-2360-EAQ-E	PCW
Respondent Austin Equipment Company, LC		<i>Policy Revision 3 (September 2011)</i>
Case ID No. 45503		<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No. RN104543780		
Media [Statute] Edwards Aquifer		
Enf. Coordinator Stephen Thompson		

Violation Number

Rule Cite(s)

Violation Description

Failed to control drainage areas as specified in the WPAP. Specifically, it was documented that the construction of dikes did not meet the approved specifications and were not completed in key areas of the Site.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>
				Percent <input type="text" value="15.0%"/>

>> 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

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 the environment.

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

One quarterly event is recommended, calculated from the date of the record review, August 14, 2012, to the date of screening, September 26, 2012.

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

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 Austin Equipment Company, LC
Case ID No. 45503
Reg. Ent. Reference No. RN104543780
Media Edwards Aquifer
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$5,000	2-Feb-2012	1-Aug-2013	1.50	\$25	\$499	\$524
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 The delayed costs include the estimated amount necessary to properly construct dikes to control drainage at the Site, calculated from the date of the initial investigation to the estimated 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** \$524

Screening Date 26-Sep-2012	Docket No. 2012-2360-EAQ-E	PCW
Respondent Austin Equipment Company, LC		<i>Policy Revision 3 (September 2011)</i>
Case ID No. 45503		<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No. RN104543780		
Media [Statute] Edwards Aquifer		
Enf. Coordinator Stephen Thompson		

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

		Harm			
		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="15.0%"/>
	Potential	<input type="text"/>	x	<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	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"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	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 Austin Equipment Company, LC
Case ID No. 45503
Reg. Ent. Reference No. RN104543780
Media Edwards Aquifer
Violation No. 3

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	\$5,000	11-Sep-2011	1-Jun-2013	1.72	\$29	\$574	\$603
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: The delayed costs include the estimated amount necessary to properly construct the water quality basins at the Site, calculated from the date construction was due to be completed to the estimated 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 \$603

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 CN602523250, RN104543780, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN602523250, Austin Equipment Company, LC **Classification:** UNSATISFACTORY **Rating:** 87.75

Regulated Entity: RN104543780, AUSTIN EQUIPMENT SITE **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 04 - Mining

Location: 501 COUNTY ROAD 344, JARRELL, WILLIAMSON COUNTY, TX

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

EDWARDS AQUIFER REGISTRATION 11-05022201 EDWARDS AQUIFER REGISTRATION 11-05022201A
EDWARDS AQUIFER REGISTRATION 11-05022201B EDWARDS AQUIFER REGISTRATION 11-05022201C
EDWARDS AQUIFER REGISTRATION 11-05022201D EDWARDS AQUIFER REGISTRATION 11-05022201E
PETROLEUM STORAGE TANK REGISTRATION 80080 AGGREGATES REGISTRATION AP0000323

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: November 14, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 14, 2007 to November 14, 2012

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

Name: Stephen Thompson

Phone: (512) 239-2558

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:

- 1 Effective Date: 03/08/2008 ADMINORDER 2007-1371-EAQ-E (1660 Order-Agreed Order With Denial)**
 - Classification: Moderate
 - Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
 - Rqmt Prov: ID No. 50222.01 PERMIT
 - Description: Failure to maintain a copy of the WPAP on site.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 213, SubChapter A 213.4(j)(2)
 - Description: Failure to obtain approval for site plan modifications.

- 2 Effective Date: 11/06/2008 ADMINORDER 2008-0288-MLM-E (1660 Order-Agreed Order With Denial)**
 - Classification: Moderate
 - Citation: 30 TAC Chapter 327 327.5(a)
 - Description: Failure to immediately abate and contain spills or releases of oil.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
 - Rqmt Prov: WPAP No. 05022201, Factors Affecting WQ PERMIT
 - Description: Failed to comply with the approved WPAP by allowing vehicle maintenance to be performed outside the shop area.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
 - Rqmt Prov: WPAP No. 05022201, PPAM PERMIT
 - Description: Failed to prevent regulated activities within a protective 50 foot stream buffer.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
 - Rqmt Prov: WPAP No. 05022201 PERMIT
 - Description: Failure to install and maintain temporary sediment controls.
 - Classification: Major
 - Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
 - Rqmt Prov: WPAP No. 05022201, SC No. 4 PERMIT
 - Description: Failure to obtain approval of a WPAP modification prior to initiating construction of aggregate washing ponds.

3 Effective Date: 06/18/2010 ADMINORDER 2009-0918-MLM-E (Findings Order-Agreed Order Without Denial)

- Classification: Major
Citation: 30 TAC Chapter 327 327.5(a)
Rqmt Prov: 2.b ORDER
Description: Failed to immediately abate and contain spills or discharges of petroleum products. Specifically, oil stains were observed on the ground in the aboveground storage tank ("AST") area behind the scale house.
- Classification: Major
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
Rqmt Prov: 2.a ORDER
Attachment A PERMIT
Description: Failed to comply with the terms of the approved Edwards Aquifer Water Pollution Abatement Plan ("WPAP") by allowing vehicle maintenance to be performed outside the shop area. Specifically, vehicle maintenance was being conducted behind the scale house.
- Classification: Moderate
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
Rqmt Prov: Standard Conditions No. 6 PERMIT
Description: Failed to install and maintain temporary erosion and sedimentation controls. Specifically, the investigator observed uncontained rock berms at the Salado Creek and tributary crossings, an improperly installed silt fence with holes and tears in the fabric at the Salado Creek crossing, and a torn and sagging silt fence near the 50 foot tributary buffer.
- Classification: Moderate
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
TWC Chapter 26 26.121
Rqmt Prov: Attachment I PERMIT
Description: Failed to prevent the discharge of industrial waste into or adjacent to water in the state. Specifically, a discarded silt fence and quarried rock accumulations were observed in the bed of Salado Creek and sediment, a triangular filter dike, and quarried rock accumulations were observed in a tributary of Salado Creek.
- Classification: Moderate
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
Rqmt Prov: Special Condition No. III PERMIT
Description: Failed to comply with the terms of the approved WPAP regarding the drainage area of the water quality pond. Specifically, the investigator observed that there were no berms, swales, or other methods used to divide the approved 10 acre drainage area for the water quality pond from the 18 acre mining area.
- Classification: Moderate
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
30 TAC Chapter 213, SubChapter A 213.5(b)(4)(D)(ii)(II)
Rqmt Prov: Perm. Poll. Abatement Measures PERMIT
Description: Failed to construct permanent best management practices ("BMPs") as designed. Specifically, the water quality pond on site was not constructed as a sedimentation and filtration basin as designed and approved, in that there was no splitter basin or outflow structure present, nor was there evidence that the pond was lined.

4 Effective Date: 05/22/2011 ADMINORDER 2010-1395-MLM-E (Findings Order-Agreed Order Without Denial)

- Classification: Major
Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
30 TAC Chapter 213, SubChapter A 213.4(j)
Rqmt Prov: WPAPMOD Approval Letter Condition No. 4 PERMIT
Description: Failed to obtain approval of a modification to an Edwards Aquifer WPAP prior to beginning a regulated activity over the Edwards Aquifer recharge zone.
- Classification: Moderate
Citation: 30 TAC Chapter 327 327.5(a)
Description: Failed to immediately abate and contain spills or discharges of petroleum products.
- Classification: Moderate
Citation: 30 TAC Chapter 328, SubChapter C 328.13
5B THSC Chapter 361, SubChapter A 361.451
Description: Failed to properly dispose of lead-acid batteries.
- Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.4
Description: Failed to properly store industrial solid waste which resulted in a discharge of industrial solid waste into or adjacent to waters in the state.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1 March 10, 2009 (681414)

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.

1 Date: 04/02/2012 (968957) CN602523250

- Self Report? NO Classification: Major
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)
Description: Failure to comply with special conditions of a Water Pollution Abatement Plan Approval Letter dated March 15, 2011.

F. Environmental audits:

Notice of Intent Date: 10/09/2009 (780196)

No DOV Associated

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
AUSTIN EQUIPMENT COMPANY, LC;
RN104543780**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2012-2360-EAQ-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Austin Equipment Company, LC ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Duncan Norton of the law firm Lloyd, Gosselink Rochelle and Townsend, P.C., presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

FINDINGS OF FACT

1. Respondent owns and operates a stone quarry operation located at 501 County Road 344 in Jarrell, Williamson County, Texas (the "Site"). The Site is near or adjacent to state water as defined in TEX. WATER CODE § 26.001(5).
2. During a record review conducted on August 14, 2012, a TCEQ Austin Regional Office investigator documented that Respondent:
 - a. Failed to pave the entrance road to the Site as prescribed in the water pollution abatement plan ("WPAP"). Specifically, the entrance road had not been paved by the due date of June 13, 2011;
 - b. Failed to complete construction of the water quality basins as designed by the date prescribed in the WPAP. Specifically, construction in the basin in Drainage Area ("DA") 1 was required to be completed as designed on June 13, 2011. The basin however, did not meet design specifications;
 - c. Failed to install soil liners for the holding ponds according to the specifications in the WPAP and submit certification from a Texas licensed professional engineer that the soils forming the bottom and sides of the holding ponds were installed according to approved specifications;

- d. Failed to control drainage areas as specified in the WPAP. Specifically, the construction of dikes did not meet the approved specifications and were not completed in key areas of the Site; and
 - e. Failed to complete construction of the water quality basins as designed by the date prescribed in the WPAP. Specifically, construction of the basins in DAs 2, 3, and 4 were not completed by the due date of September 11, 2011.
3. Respondent received notice of the violations on or about September 13, 2012.

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 ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to pave the entrance road to the Site as prescribed in the WPAP, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer ("EA") WPAP No. 11-05022201D Special Condition No. IV.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to complete construction of the water quality basins as designed by the date prescribed in the WPAP, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and EA WPAP No. 11-05022201D Special Condition No. VII.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to install soil liners for the holding ponds according to the specifications in the WPAP and submit certification from a Texas licensed professional engineer that the soils forming the bottom and sides of the holding ponds were installed according to approved specifications, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and EA WPAP No. 11-05022201D Special Condition No. V.
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to control drainage areas as specified in the WPAP, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and EA WPAP No. 11-05022201D Special Condition No. VI.
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to complete construction of the water quality basins as designed by the date prescribed in the WPAP, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and EA WPAP No. 11-05022201D Special Condition No. VII.
7. Pursuant to TEX. WATER CODE § 7.051, TCEQ 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 fifty thousand seven hundred dollars (\$50,700.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid one thousand seven hundred dollars (\$1,700.00) of the administrative penalty. The remaining amount of forty-nine thousand dollars (\$49,000.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one thousand four hundred dollars (\$1,400.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 8, above, 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 Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Austin Equipment Company, LC, Docket No. 2012-2360-EAQ-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
2. Respondent shall undertake the following technical requirements:
 - a. Either:
 - i. Within 60 days after the effective date of this Agreed Order, Respondent shall:
 - A. Pave the entrance road to the Site in accordance with EA WPAP No. 11-05022201D Special Condition No. IV; and
 - B. Construct dikes in the key areas of the Site that meet the approved specifications in EA WPAP No. 11-05022201D Special Condition No. VI.
 - ii. Within 75 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.d., below, to demonstrate compliance with Ordering Provision No. 2.a.i.;
 - iii. Within 90 days after the effective date of this Agreed Order, Respondent shall:
 - A. Install soil liners for the holding ponds according to the specifications in the WPAP, and within 30 days after the installations are completed, submit certification from a Texas licensed professional engineer that the soils forming the bottom and sides of the holding ponds were installed according to the approved specifications, in accordance with EA WPAP No. 11-05022201D Special Condition No. V; and
 - B. Complete construction of the water quality basins in DAs 1, 2, 3, and 4 as designed, in accordance with EA WPAP No. 11-05022201D Special Condition No. VII.; and
 - iv. Within 105 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.d., below, to demonstrate compliance with Ordering Provision 2.a.iii.
 - b. Or:
 - i. Within 60 days after the effective date of this Agreed Order, Respondent shall submit an administratively complete modification to EA WPAP No. 11-05022201D to reflect the current conditions of the Site, along with the associated application fee, to:

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the EA WPAP modification within 30 days after the date of such requests or by any other deadline specified by the TCEQ in writing; and

- ii. Within 75 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.d., below, to demonstrate compliance with Ordering Provision No. 2.b.i.
- c. Or:
 - i. Within 180 days, after the effective date of this Agreed Order, Respondent shall either transfer responsibility for maintaining best management practices at the Site under EA WPAP No. 11-05022201D Standard Conditions, After Construction Nos. 19 and 20 to another entity, or close the Site in accordance with EA WPAP No. 11-05022201D Standard Conditions, After Construction No. 22; and
 - ii. Within 195 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.d., below, to demonstrate compliance with Ordering Provision No. 2.c.i.
- d. The certifications required by these Ordering Provisions 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 certifications 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:

Carolyn Runyon, Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- 3. All relief not expressly granted in this Agreed Order is denied.

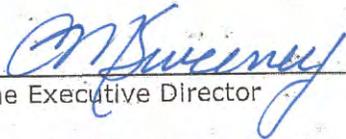
4. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed 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.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
7. This Agreed Order, issued by the Commission, shall not be admissible against 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 TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute.
8. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director



Date

August 1, 2014

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Austin Equipment Company, LC, 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 in this Agreed 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Signature - John Schuler, Director
Austin Equipment Company, LC

Date

4-26-14