

Executive Summary – Enforcement Matter – Case No. 48988
WESSON SAND COMPANY, INC.
RN106876485
Docket No. 2014-1042-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – APO, WQ, and AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Wesson Sand, 6400 Koeblen Road, Rosenberg, Fort Bend County

Type of Operation:

Aggregate production operation (“APO”)

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: Yes

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: October 31, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,375

Amount Deferred for Expedited Settlement: \$1,875

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$7,500

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: \$4,625

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): January 22, 2014

Complaint Information: Alleged that a sand pit is storing a pile of sand taller than the fence line, which disperses onto the complainant's property. The sand blowing in the air makes it hard to breath.

Executive Summary – Enforcement Matter – Case No. 48988
WESSON SAND COMPANY, INC.
RN106876485
Docket No. 2014-1042-MLM-E

Complaint Date(s): February 3, 2014

Complaint Information: Alleged a pile of sand, taller than seven feet, is stored by a fence line. The sand causes breathing difficulties and irritates the complainant's allergies

Complaint Date(s): February 4, 2014

Complaint Information: Alleged the sand piles are extremely close to a fence and the sand is creating a film on their cars.

Complaint Date(s): February 6, 2014

Complaint Information: Alleged sand from mining activities is creating a nuisance, and difficulty breathing.

Complaint Date(s): February 8, 2014

Complaint Information: Alleged sand from mining activities is creating a nuisance, collecting on their windows.

Complaint Date(s): April 30, 2014

Complaint Information: Alleged that dump trucks traveling on Koeblan Road are causing sand to be persistent problem in the neighborhood

Date(s) of Investigation: February 14, 2014 through May 5, 2014

Date(s) of NOE(s): July 3, 2014

Violation Information

1. Failed to register the Site as an APO no later than the 10th business day before the beginning date of regulated activities [30 TEX. ADMIN. CODE § 342.25(b)].
2. Failed to prevent particulate emissions from causing nuisance conditions. Specifically, particulate matter (sand) dispersed from mining operations, was observed on multiple neighboring properties [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].
3. Failed to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR050000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following:

- a. By April 8, 2014, registered the Site as an APO; and
- b. By April 8, 2014, obtained authorization to discharge stormwater associated with industrial activities at the Site under TPDES General Permit No. TXR05CB33.

**Executive Summary – Enforcement Matter – Case No. 48988
WESSON SAND COMPANY, INC.
RN106876485
Docket No. 2014-1042-MLM-E**

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, implement measures to ensure that dust emissions do not leave the Site or measures to prevent nuisance dust emissions.
- b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision a.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Heather Brister, Enforcement Division, Enforcement Team 1, MC Region 4/DFW, (817) 588-5825; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Herbert Wesson, President, WESSON SAND COMPANY, INC., 3800 Halk Street, Suite 3, Pearland, Texas 77581

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	7-Jul-2014	Screening	15-Jul-2014	EPA Due	
	PCW	16-Jul-2014				

RESPONDENT/FACILITY INFORMATION	
Respondent	WESSON SAND COMPANY, INC.
Reg. Ent. Ref. No.	RN106876485
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	48988	Order Type	1660
Docket No.	2014-1042-MLM-E	Government/Non-Profit	No
Media Program(s)	Aggregate Production Operation	Enf. Coordinator	Heather Brister
Multi-Media	Air	EC's Team	Enforcement Team 1
Admin. Penalty \$	Limit Minimum \$5,000	Maximum \$10,000	Violation Maximum \$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7 \$0

Notes: No adjustment for compliance history.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$125
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$2	*Capped at the Total EB \$ Amount	
Estimated Cost of Compliance	\$300		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$375
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Notes: (Empty box)

Final Penalty Amount	\$375
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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Notes: The final assessed penalty has been adjusted to meet the statutory requirements of Tex. Water Code § 28A.102.

DEFERRAL	20.0% Reduction	Adjustment	-\$1,000
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$4,000
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Screening Date 15-Jul-2014

Docket No. 2014-1042-MLM-E

PCW

Respondent WESSON SAND COMPANY, INC.

Policy Revision 4 (April 2014)

Case ID No. 48988

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106876485

Media [Statute] Aggregate Production Operation

Enf. Coordinator Heather Brister

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%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 15-Jul-2014

Docket No. 2014-1042-MLM-E

PCW

Respondent WESSON SAND COMPANY, INC.

Policy Revision 4 (April 2014)

Case ID No. 48988

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106876485

Media [Statute] Aggregate Production Operation

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 342.25(b)

Violation Description Failed to register the Site as an aggregate production operation no later than the 10th business day before the beginning date of regulated activities, as documented during an investigation conducted on February 14, 2014.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

53 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

25.0%

Reduction \$125

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

Notes The Respondent achieved compliance by April 8, 2014.

Violation Subtotal \$375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$375

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent WESSON SAND COMPANY, INC.
Case ID No. 48988
Reg. Ent. Reference No. RN106876485
Media Aggregate Production Operation
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
<i>No commas or \$</i>							

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	\$300	14-Feb-2014	8-Apr-2014	0.15	\$2	n/a	\$2
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register the Site as an aggregate production operation. Date required is the investigation date and final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$300

TOTAL \$2



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	7-Jul-2014	Screening	15-Jul-2014	EPA Due	
	PCW	18-Jul-2014				

RESPONDENT/FACILITY INFORMATION	
Respondent	WESSON SAND COMPANY, INC.
Reg. Ent. Ref. No.	RN106876485
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	2
Enf./Case ID No.	48988	Order Type	1660
Docket No.	2014-1042-MLM-E	Government/Non-Profit	No
Media Program(s)	Air	Enf. Coordinator	Heather Brister
Multi-Media	Water Quality	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	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$625
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$308
Estimated Cost of Compliance	\$7,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,375
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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	\$4,375
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,375
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DEFERRAL	20.0% Reduction	Adjustment	-\$875
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$3,500
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Screening Date 15-Jul-2014

Docket No. 2014-1042-MLM-E

PCW

Respondent WESSON SAND COMPANY, INC.

Policy Revision 4 (April 2014)

Case ID No. 48988

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106876485

Media [Statute] Air

Enf. Coordinator Heather Brister

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%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 15-Jul-2014

Docket No. 2014-1042-MLM-E

PCW

Respondent WESSON SAND COMPANY, INC.

Policy Revision 4 (April 2014)

Case ID No. 48988

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106876485

Media [Statute] Air

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description

Failed to prevent particulate emissions from causing nuisance conditions, as documented during investigations conducted on February 14 and May 5, 2014. Specifically, particulate matter (sand) dispersed from mining operations, was observed on multiple neighboring properties.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2

151 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$2,500

Two single events are recommended for the investigation dates (February 14, and May 5, 2014) on which nuisance conditions were documented.

Good Faith Efforts to Comply

0.0%

Reduction \$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$293

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent WESSON SAND COMPANY, INC.
Case ID No. 48988
Reg. Ent. Reference No. RN106876485
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	14-Feb-2014	18-Apr-2015	1.17	\$293	n/a	\$293

Notes for DELAYED costs

Estimated cost to implement measures to ensure that dust emissions do not leave the Site or measures to prevent nuisance dust emissions. The date required is the date of the first investigation documenting a nuisance condition and the final date is 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

\$293

Screening Date 15-Jul-2014

Docket No. 2014-1042-MLM-E

PCW

Respondent WESSON SAND COMPANY, INC.

Policy Revision 4 (April 2014)

Case ID No. 48988

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106876485

Media [Statute] Air

Enf. Coordinator Heather Brister

Violation Number 2

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

Violation Description

Failed to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit No. TXR050000, as documented during an investigation conducted on February 14, 2014.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2

53 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

Two monthly events are recommended from the investigation date (February 14, 2014) to the compliance date (April 8, 2014).

Good Faith Efforts to Comply

25.0%

Reduction \$625

Before NOE/NOV NOE/NOV to EDRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes

The Respondent achieved compliance on April 8, 2014.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$1,875

This violation Final Assessed Penalty (adjusted for limits) \$1,875

Economic Benefit Worksheet

Respondent WESSON SAND COMPANY, INC.
Case ID No. 48988
Reg. Ent. Reference No. RN106876485
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	14-Feb-2014	8-Apr-2014	0.15	\$15	n/a	\$15
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost associated with preparing and submitting a Notice of Intent to obtain authorization and developing and implementing a stormwater pollution prevention plan. Date required is the investigation date and final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$15

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.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN602701633, RN106876485, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN602701633, WESSON SAND COMPANY, INC. **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN106876485, WESSON SAND **Classification:** NOT APPLICABLE **Rating:** N/A

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

CH Group: 04 - Mining

Location: 6400 KOEBLEN ROAD, ROSENBERG, FORT BEND COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

ID Number(s): **STORMWATER PERMIT** TXR05CB33
AGGREGATES REGISTRATION AP0000853

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

Date Compliance History Report Prepared: July 15, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 15, 2009 to July 15, 2014

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

Name: Heather Brister

Phone: (817) 588-5825

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** 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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WESSON SAND COMPANY, INC.
RN106876485**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2014-1042-MLM-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding WESSON SAND COMPANY, INC. ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7, 26, and 28A. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent is a responsible party, as defined in TEX. WATER CODE § 28A.001(6), because it is an operator, as defined in TEX. WATER CODE § 28A.001(4), of an aggregate production operation ("APO") located at 6400 Koeblen Road in Rosenberg, Fort Bend County, Texas (the "Site"). Aggregates are being or have been removed or extracted from the Site's earth. Therefore, the Site is an APO as defined in TEX. WATER CODE § 28A.001(1).
2. The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
3. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
4. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 8, 2014.

6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
7. An administrative penalty in the amount of Nine Thousand Three Hundred Seventy-Five Dollars (\$9,375) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand Five Hundred Dollars (\$7,500) of the administrative penalty and One Thousand Eight Hundred Seventy-Five Dollars (\$1,875) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
8. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
9. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
10. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
 - a. By April 8, 2014, registered the Site as an APO; and
 - b. By April 8, 2014, obtained authorization to discharge stormwater associated with industrial activities at the Site under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05CB33.
11. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
12. 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.
13. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Site, the Respondent is alleged to have:

1. Failed to register the Site as an APO no later than the 10th business day before the beginning date of regulated activities, in violation of 30 TEX. ADMIN. CODE § 342.25(b), as documented during an investigation conducted on February 14, 2014.
2. Failed to prevent particulate emissions from causing nuisance conditions, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b), as documented during investigations conducted on February 14 and May 5, 2014. Specifically, particulate matter (sand) dispersed from mining operations, was observed on multiple neighboring properties.
3. Failed to obtain authorization to discharge stormwater associated with industrial activities under TPDES General Permit No. TXR050000, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on February 14, 2014.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: WESSON SAND COMPANY, INC., Docket No. 2014-1042-MLM-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement measures to ensure that dust emissions do not leave the Site or measures to prevent nuisance dust emissions.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Air Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

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

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pamela Murray
For the Executive Director

3/25/15
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Herb Wesson
Signature

9-26-2014
Date

Herb Wesson
Name (Printed or typed)
Authorized Representative of
WESSON SAND COMPANY, INC.

President
Title

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