

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 49104
E & A MATERIALS, INC.
RN107582637
Docket No. 2014-1137-MLM-E

Order Type:

Default Order (SOAH preliminary hearing)

Media:

Water Rights ("WR") and Water Quality ("WQ")

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

7600 State Highway 16 South, Graham, Young County

Type of Operation:

crushed limestone quarry

Other Significant Matters:

Additional Pending Enforcement Actions: 2014-0987-WQ-E (EDPRP filed 02/09/2015)
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: May 8, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$2,750

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$2,750

Compliance History Classifications:

Person/CN –Unclassified
Site/RN – Not Applicable

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014 (Both PCWs)

Investigation Information

Complaint Date(s): June 16, 2014

Complaint Information: Alleged the Facility was not meeting stormwater regulations by placing fill material in a creek located in Young County.

Date(s) of Investigation: July 7, 2014

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

Date(s) of NOE(s): July 24, 2014

Violation Information

1. Failed to obtain a permit from the Commission prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water [TEX. WATER CODE §§ 11.081 and 11.121 and 30 TEX. ADMIN. CODE § 297.11].
2. Failed to obtain authorization under the Texas Pollution Discharge Elimination System (“TPDES”) General Permit (“GP”) No. TXR05000 to discharge storm water associated with industrial activities, or coverage under a No Exposure Certification (“NEC”) [40 C.F.R. § 122.26(c) and 30 TEX. ADMIN. CODE § 281.25(a)(4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately, cease impounding, diverting, storing, or using any water in the state until authorization is obtained.
2. Within 30 days:
 - a. Submit a water rights permit application and the associated application fee; and
 - b. Either develop and implement a Storm Water Pollution Prevention Plan (“SWP3”) and submit a Notice of Intent (“NOI”), or submit a completed NEC for Storm Water Discharges Associated with Industrial Activity under TPDES GP No. TXR05000 and the associated application fee.
3. Within 45 days, submit written certification, to demonstrate compliance with Technical Requirement No. 2.
4. Within 330 days, submit written certification, to demonstrate compliance with Technical Requirement No. 1.

Litigation Information

Date Petition(s) Filed: November 19, 2014
Date Green Card(s) Signed: November 21, 2014
Date Answer(s) Filed: December 16, 2014
SOAH Referral Date: January 20, 2015
Hearing Date(s):
Preliminary hearing: March 12, 2015 (defaulted)

Contact Information

TCEQ Attorneys: David A. Terry, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Christopher Bost, Enforcement Division, (512) 239-4575
TCEQ Regional Contact: Michael Taylor, Abilene Regional Office, (325) 698-9674
Respondent Contact: John Pitts, President, E & A MATERIALS, INC., P.O. Box 365, Wichita Falls, Texas 76307
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	28-Jul-2014		
	PCW	11-Aug-2014	Screening	1-Aug-2014
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	E & A MATERIALS, INC.		
Reg. Ent. Ref. No.	RN107582637		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	49104	No. of Violations	1
Docket No.	2014-1137-MLM-E	Order Type	1660
Media Program(s)	Water Rights	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Christopher Bost
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$250
---	-------------------	-------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
---------------------------	------------------	--------------------------------	-----

Notes: No adjustment for compliance history.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts: \$71
 Estimated Cost of Compliance: \$1,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$250
-----------------------------	-----------------------	-------

OTHER FACTORS AS JUSTICE MAY REQUIRE	500.0%	Adjustment	\$1,250
---	--------	-------------------	---------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: An additional 500% enhancement was added because the impoundment occurred during exceptional drought conditions (U.S. Drought Monitor Level D4).

Final Penalty Amount \$1,500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,500
-----------------------------------	-------------------------------	---------

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

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$1,500
------------------------	---------

Screening Date 1-Aug-2014

Docket No. 2014-1137-MLM-E

PCW

Respondent E & A MATERIALS, INC.

Policy Revision 4 (April 2014)

Case ID No. 49104

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107582637

Media [Statute] Water Rights

Enf. Coordinator Christopher Bost

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 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	1-Aug-2014	Docket No.	2014-1137-MLM-E	PCW
Respondent	E & A MATERIALS, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	49104			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN107582637			
Media [Statute]	Water Rights			
Enf. Coordinator	Christopher Bost			

Violation Number

Rule Cite(s)

Violation Description

Failed to obtain a permit from the Commission prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water, as documented during an investigation conducted on July 7, 2014. Specifically, the Respondent built a dam of earthen material measuring approximately 36 feet wide and approximately six feet high in an unnamed creek. The dam was located approximately 220 feet north of the confluence of the creek and the Brazos River, creating an impoundment of approximately 0.08 acre-feet.

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="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

One monthly event is recommended.

Good Faith Efforts to Comply

Reduction

Before NOE/NOV NOE/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 E & A MATERIALS, INC.
Case ID No. 49104
Reg. Ent. Reference No. RN107582637
Media 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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,000	7-Jul-2014	25-Mar-2015	0.72	\$2	\$48	\$50
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	\$500	7-Jul-2014	9-May-2015	0.84	\$21	n/a	\$21
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The first delayed cost includes the estimated amount to cease impounding, diverting, storing, or using state water until authorization is obtained. Date required is the investigation date. Final date is the estimated date of compliance.

The second delayed cost includes the estimated amount to prepare and submit a permit application to appropriate state water, including filing and recording fees. Date required is the investigation date. 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 \$1,500

TOTAL \$71



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	28-Jul-2014		
	PCW	11-Aug-2014	Screening	1-Aug-2014
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	E & A MATERIALS, INC.
Reg. Ent. Ref. No.	RN107582637
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	49104	No. of Violations	1
Docket No.	2014-1137-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Water Rights	Enf. Coordinator	Christopher Bost
		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	\$1,250
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
---------------------------	------------------	--------------------------------	-----

Notes: No adjustment for compliance history.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts: \$84
 Estimated Cost of Compliance: \$2,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,250
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$1,250
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,250
-----------------------------------	-------------------------------	---------

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

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$1,250
------------------------	---------

Screening Date	1-Aug-2014	Docket No.	2014-1137-MLM-E	PCW
Respondent	E & A MATERIALS, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	49104			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN107582637			
Media [Statute]	Water Quality			
Enf. Coordinator	Christopher Bost			

Compliance History Worksheet

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

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

Adjustment Percentage (Subtotal 2) 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	1-Aug-2014	Docket No.	2014-1137-MLM-E	PCW
Respondent	E & A MATERIALS, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	49104			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN107582637			
Media [Statute]	Water Quality			
Enf. Coordinator	Christopher Bost			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

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

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

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOE/NOV	NOE/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 E & A MATERIALS, INC.
Case ID No. 49104
Reg. Ent. Reference No. RN107582637
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	7-Jul-2014	9-May-2015	0.84	\$84	n/a	\$84
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 The delayed cost includes the estimated amount to develop and implement a storm water pollution prevention plan and submit a Notice of Intent and the corresponding application fee or to submit a NEC for Storm Water Discharges Associated with Industrial Activity under TPDES GP No. TXR050000 and the corresponding fee payment. Date required is the investigation date. 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	\$2,000	TOTAL	\$84
-----------------------------------	---------	--------------	------

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 CN602565855, RN107582637, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN602565855, E & A MATERIALS, INC. **Classification:** UNCLASSIFIED **Rating:** -----
Regulated Entity: RN107582637, E & A MATERIALS MAYO PIT **Classification:** NOT APPLICABLE **Rating:** N/A
Complexity Points: N/A **Repeat Violator:** N/A
CH Group: 04 - Mining
Location: Located at 7600 State Highway 16 South, Graham, Young County, Texas
TCEQ Region: REGION 03 - ABILENE
ID Number(s): **WATER QUALITY NON PERMITTED** ID NUMBER R03107582637

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 9/1/2013

Date Compliance History Report Prepared: August 26, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected August 26, 2009 to August 26, 2014

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

Name: Christopher Bost

Phone: (512) 239-4575

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

THIS PAGE INTENTIONALLY LEFT BLANK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
E & A MATERIALS, INC.;
RN107582637**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2014-1137-MLM-E

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

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

FINDINGS OF FACT

1. Respondent operates a crushed limestone quarry located at 7600 State Highway 16 South in Graham, Young County, Texas (the "Site"). The Site adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE §§ 11.021 and 26.001(5), and 30 TEX. ADMIN. CODE § 297.1(50).
2. During an investigation conducted on July 7, 2014, an investigator documented that Respondent:
 - a. Failed to obtain a permit from the Commission prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water. Specifically, Respondent built a dam of earthen material measuring approximately 36 feet wide and approximately six feet high in an unnamed creek. The dam was located approximately 220 feet north of the confluence of the creek and the Brazos river, creating an impoundment of approximately 0.08 acre-feet; and
 - b. Failed to obtain authorization under the Texas Pollutant Discharge Elimination System ("TPDES") General Permit ("GP") No. TXR05000 to discharge storm water associated with industrial activities, or coverage under a No Exposure Certification ("NEC") for Storm Water Discharges Associated with Industrial Activity under TPDES GP No. TXR05000.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of E & A MATERIALS, INC." (the "EDPRP") in the TCEQ Chief Clerk's office on November 19, 2014.
4. Respondent filed an answer requesting a hearing on December 16, 2014, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on January 20, 2015.
5. On February 9, 2015, the TCEQ Chief Clerk mailed notice of the March 12, 2015 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

6. On March 12, 2015, the Administrative Law Judge ("ALJ") convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
7. On March 12, 2015, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1 so that TCEQ may dispose of this case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 11 and 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to obtain a permit from the Commission prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water, in violation of TEX. WATER CODE §§ 11.081 and 11.121 and 30 TEX. ADMIN. CODE § 297.11.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to obtain authorization under the TPDES GP No. TXR05000 to discharge storm water associated with industrial activities or coverage under an NEC for Storm Water Discharges Associated with Industrial Activity under TPDES GP No. TXR05000, in violation of 40 C.F.R. § 122.26(c) and 30 TEX. ADMIN. CODE § 281.25(a)(4).
4. As evidenced by Finding of Fact No. 4, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE §§ 7.056 and 11.0842(f), and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Finding of Fact No. 5, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE §§ 7.058 and 11.0842(f), 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
6. As evidenced by Findings of Fact Nos. 6 and 7, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE §§ 7.057 and 11.0842(f), and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
7. Pursuant to TEX. WATER CODE §§ 7.051 and 11.0842(f), the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of two thousand seven hundred fifty dollars (\$2,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE §§ 7.053 and 11.0842(c).
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of two thousand seven hundred fifty dollars (\$2,750.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: E & A MATERIALS, INC.; Docket No. 2014-1137-MLM-E" to:

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

3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall cease impounding, diverting, storing, or using any water in the state until authorization is obtained;
 - b. Within 30 days after the effective date of this Order, Respondent shall:
 - i. Submit a water rights permit application and the associated application fee, in accordance with 30 TEX. ADMIN. CODE ch. 297, to:

Water Supply Division
Water Rights Permitting and Availability Section, MC 160
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- ii. Either develop and implement a Storm Water Pollution Prevention Plan ("SWP3") and submit a Notice of Intent ("NOI"), in accordance with TPDES GP No. TXR05000, to:

Texas Commission on Environmental Quality
Wastewater Permitting Section, MC 148
P.O. Box 13087
Austin, Texas 78711-3087

Or submit a completed NEC for Storm Water Discharges Associated with Industrial Activity under TPDES GP No. TXR05000 and the associated application fee to:

Texas Commission on Environmental Quality
Financial Administration Division
Cashier's Office, MC-124
P.O. Box 13088
Austin, Texas 78711-3088

- c. Within 45 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 3.e., to demonstrate compliance with Ordering Provision No. 3.b.
- d. Within 330 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 3.e., to demonstrate compliance with Ordering Provision No. 3.a.
- e. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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."

The written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Water Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Blvd.
Abilene, Texas 79602-7833

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the

Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF DAVID A. TERRY

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of E & A MATERIALS, INC." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 19, 2014.

Respondent filed an answer requesting a hearing on December 16, 2014, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on January 20, 2015. On February 9, 2015, the TCEQ Chief Clerk mailed notice of the March 12, 2015 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

Respondent failed to appear at the hearing on March 12, 2015. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, issued on March 12, 2015, so that TCEQ may dispose of this case on a default basis."

David A. Terry, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Subscribed and sworn to before me on this 21st day of April, A.D. 2015.

Notary Public, State of Texas

