EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 48971
E & A MATERIALS, INC.
RN107403172
Docket No. 2014-0987-WQ-E

Order Type:
Default Order

Media:
Water Quality

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
5448 Farm to Market Road 2072, Vernon, Wilbarger County

Type of Operation:
aggregate production operation (APO)

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: August 28, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: $5,000

Total Paid to General Revenue: $0

Total Due to General Revenue: $5,000

Compliance History Classifications:
Person/CN –Unclassified
Site/RN – Not Applicable

Major Source: No

Statutory Limit Adjustment: $4,500 upward adjustment

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: April 22, 2014

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

Date(s) of NOE(s): June 20, 2014

Violation Information

Failed to register the Site as an APO [30 TEX. ADMIN. CODE § 342.25].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
By May 29, 2014, Respondent registered the Site as an APO under APO Registration No. APO000928.

Technical Requirements:
N/A

Litigation Information

Date Petition(s) Filed: February 9, 2015

Date Green Card(s) Signed: February 11, 2015

Date Answer(s) Filed: N/A

Contact Information

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

TCEQ Enforcement Coordinator: Katelyn Samples, Enforcement Division, (512) 239-2545

TCEQ Regional Contact: Michael Taylor, Abilene Regional Office, (325) 698-9674

Respondent Contact: John M. 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*

DATES					
Assigned	23-Jun-2014				
PCW	28-Jan-2015	Screening	7-Jul-2014	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	E & A Materials, Inc.		
Reg. Ent. Ref. No.	RN107403172		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	48971	No. of Violations	1
Docket No.	2014-0987-WQ-E	Order Type	1660
Media Program(s)	Aggregate Production Operation	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Katelyn Samples
		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**

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	$39
Estimated Cost of Compliance	$500

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$500**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$500**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$5,000**

Notes: The final assessed penalty has been adjusted to meet the statutory requirements of Tex. Water Code § 28A.102.

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 **$5,000**

Screening Date	7-Jul-2014	**Docket No.**	2014-0987-WQ-E	**PCW**
Respondent	E & A Materials, Inc.			*Policy Revision 4 (April 2014)*
Case ID No.	48971			*PCW Revision March 26, 2014*
Reg. Ent. Reference No.	RN107403172			
Media [Statute]	Aggregate Production Operation			
Enf. Coordinator	Katelyn Samples			

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgments or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	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	7-Jul-2014	**Docket No.** 2014-0987-WQ-E	**PCW**
Respondent	E & A Materials, Inc.		*Policy Revision 4 (April 2014)*
Case ID No.	48971		*PCW Revision March 26, 2014*
Reg. Ent. Reference No.	RN107403172		
Media [Statute]	Aggregate Production Operation		
Enf. Coordinator	Katelyn Samples		

Violation Number 1

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

Violation Description Failed to register the Site as an aggregate production operation.

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

37 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended from the investigation date (April 22, 2014) to the compliance date (May 29, 2014).

Good Faith Efforts to Comply

0.0% Reduction $0

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

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

Violation Subtotal $500

Economic Benefit (EB) for this violation

Estimated EB Amount $39

Statutory Limit Test

Violation Final Penalty Total $500

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

Economic Benefit Worksheet

Respondent E & A Materials, Inc.
Case ID No. 48971
Reg. Ent. Reference No. RN107403172
Media Aggregate Production Operation
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)				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	$500	30-Oct-2012	29-May-2014	1.58	$39	n/a	$39
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to register the Site as an aggregate production operation. The date required is the date the registration was due. The 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 $500

TOTAL $39

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, RN107403172, 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: RN107403172, VERNON QUARRY **Classification:** NOT APPLICABLE **Rating:** N/A

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

CH Group: 04 - Mining

Location: 5448 Farm-to-Market Road 2072 in Vernon, Wilbarger County, Texas

TCEQ Region: REGION 03 - ABILENE

ID Number(s): **AGGREGATES** REGISTRATION AP0000928

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

Date Compliance History Report Prepared: July 09, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 09, 2009 to July 09, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Jacquelyn Green **Phone:** (512) 239-2587

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 E & A MATERIALS, INC.; RN107403172	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2014-0987-WQ-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, 26, and 28A, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. 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 is a responsible party, as defined in TEX. WATER CODE § 28A.001(6), because it is the owner, as defined in TEX. WATER CODE § 28A.001(5), of an aggregate production operation ("APO"), as defined in TEX. WATER CODE § 28A.001(1), located at 5448 Farm to Market Road 2072 in Vernon, Wilbarger County, Texas (the "Site").

2. During an investigation conducted on April 22, 2014, an investigator documented that Respondent failed to register the Site as an APO.

3. The Executive Director recognizes that by May 29, 2014, Respondent registered the Site as an APO under APO Registration No. APO000928.

4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against E & A MATERIALS, INC." (the "EDPRP") in the TCEQ Chief Clerk's office on February 9, 2015.

5. By letter dated February 9, 2015, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on February 11, 2015, as evidenced by the signatures on the card.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 26 and 28A and the rules of the TCEQ.

2. As evidenced by Finding of Fact No. 2, Respondent failed to register the Site as an APO, in violation of 30 TEX. ADMIN. CODE § 342.25.

3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).

4. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

5. Pursuant to TEX. WATER CODE § 7.051, 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.

6. An administrative penalty in the amount of five thousand dollars ($5,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. 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 five thousand dollars ($5,000.00) 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. 2014-0987-WQ-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. All relief not expressly granted in this Order is denied.

4. 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.

5. 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.

6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the

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

7. The Executive Director may 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.

8. 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.

9. 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 JOEL CORDERO

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Joel Cordero. 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 E & A MATERIALS, INC." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 9, 2015.

The EDPRP was mailed to Respondent's last known address on February 9, 2015, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on February 11, 2015, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

Joel Cordero, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Joel Cordero, 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 29th day of July, A.D. 2015.

ECKO RENE BEGGS
Notary Public, State of Texas
My Commission Expires
MAY 30, 2018

Notary without Bond

Notary Public, State of Texas