

Executive Summary – Enforcement Matter – Case No. 46598
Johnny D. Johnson dba Johnson Excavating
RN105694665
Docket No. 2013-0694-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM - PST, WQ, APO

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Johnson Excavating Dirt Pit, located on the north side of Texas 103, 0.25 mile west of McCarty Road, Lufkin, Angelina County

Type of Operation:

Sand mining operation

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

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: November 14, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$10,125

Amount Deferred for Expedited Settlement: \$2,025

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$8,100

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

Statutory Limit Adjustment: \$4,650

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 46598
Johnny D. Johnson dba Johnson Excavating
RN105694665
Docket No. 2013-0694-MLM-E

Investigation Information

Complaint Date(s): February 6, 2013

Complaint Information: Alleged a sandpit on the Respondent's property did not have a silting fence and resulted in sand to erode into a nearby creek.

Date(s) of Investigation: March 4, 2013

Date(s) of NOE(s): March 6, 2013

Violation Information

1. Failed to obtain authorization to discharge stormwater associated with industrial activities under the 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)].

2. Failed to register the Site as an aggregate production operation by October 30, 2012 [30 TEX. ADMIN. CODE § 342.25(a)].

3. Failed to register the above ground storage tanks (“ASTs”). Specifically, the Respondent owns and operates a 10,000 gallon and a 2,000 gallon AST [30 TEX. ADMIN. CODE § 334.127(a)(1)].

4. Failed to prevent an unauthorized discharge into or adjacent to water in the state. Specifically, it was noted that sediment discharged into Conner Spring Branch Creek. The sediment filled the creek and travelled beyond the property boundary to an adjacent property. It was noted that there is an eroded channel in the sand that extended into a wooded area [TEX. WATER CODE § 26.121(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures:

a. By May 24, 2013, registered the 10,000 gallon and 2,000 gallon ASTs.

b. On July 9, 2013:

i. Obtained authorization to discharge stormwater associated with industrial activities under TPDES Multi-Sector General Permit No. TXR05BV12; and

ii. Registered the Site as an aggregate production operation.

c. By July 10, 2013, removed sediment from Conner Spring Branch Creek, added sand to the eroded channel, constructed a silt fence, and built a dam around the sand pit.

**Executive Summary – Enforcement Matter – Case No. 46598
Johnny D. Johnson dba Johnson Excavating
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Docket No. 2013-0694-MLM-E**

Technical Requirements:

N/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: Cheryl Thompson, Enforcement Division,
Enforcement Team 3, MC R-04, (817) 588-5886; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Johnny D. Johnson, Owner, Johnson Excavating, 308 Woodlawn,
Lufkin, Texas 75904

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	18-Mar-2013	Screening	28-Mar-2013	EPA Due	
	PCW	8-Jan-2014				

RESPONDENT/FACILITY INFORMATION

Respondent	Johnny D. Johnson dba Johnson Excavating				
Reg. Ent. Ref. No.	RN105694665				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	46598	No. of Violations	1			
Docket No.	2013-0694-MLM-E	Order Type	1660			
Media Program(s)	Aggregate Production Operation	Government/Non-Profit	No			
Multi-Media	Petroleum Storage Tank	Enf. Coordinator	Cheryl Thompson			
	Water Quality	EC's Team	Enforcement Team 3			
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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$13
Estimated Cost of Compliance	\$375

*Capped at the Total EB \$ Amount

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

Notes

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 28-Mar-2013

Docket No. 2013-0694-MLM-E

PCW

Respondent Johnny D. Johnson dba Johnson Excavating

Policy Revision 3 (September 2011)

Case ID No. 46598

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105694665

Media [Statute] Aggregate Production Operation

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	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)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 28-Mar-2013

Docket No. 2013-0694-MLM-E

PCW

Respondent Johnny D. Johnson dba Johnson Excavating

Policy Revision 3 (September 2011)

Case ID No. 46598

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105694665

Media [Statute] Aggregate Production Operation

Enf. Coordinator Cheryl Thompson

Violation Number 1

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

Violation Description Failed to register the Site as an aggregate production operation by October 30, 2012.

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

149 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.

Good Faith Efforts to Comply

25.0%

Reduction \$125

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

Notes The Respondent achieved compliance on July 9, 2013.

Violation Subtotal \$375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$13

Violation Final Penalty Total \$325

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

Economic Benefit Worksheet

Respondent Johnny D. Johnson dba Johnson Excavating
Case ID No. 46598
Reg. Ent. Reference No. RN105694665
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
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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	\$375	30-Oct-2012	9-Jul-2013	0.69	\$13	n/a	\$13
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register as an aggregate production operation. The Date Required is the date the registration was due and the Final Date is the date the registration was issued.

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 \$375

TOTAL \$13



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

DATES	Assigned	18-Mar-2013	Screening	28-Mar-2013	EPA Due	
	PCW	23-Feb-2015				

RESPONDENT/FACILITY INFORMATION			
Respondent	Johnny D. Johnson dba Johnson Excavating		
Reg. Ent. Ref. No.	RN105694665		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46598	No. of Violations	3
Docket No.	2013-0694-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Petroleum Storage Tank	Enf. Coordinator	Cheryl Thompson
	Aggregate Production Operation	EC's Team	Enforcement Team 3
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
Compliance History	-10.0% Enhancement	Subtotals 2, 3, & 7	-\$625

Notes	Reduction for high performer classification.		
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.		
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$500
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$89	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$5,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,125
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Notes			
	Final Penalty Amount	\$5,125	

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,125
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,025
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<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
Notes	Deferral offered for expedited settlement.		

PAYABLE PENALTY	\$4,100
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Screening Date 28-Mar-2013

Docket No. 2013-0694-MLM-E

PCW

Respondent Johnny D. Johnson dba Johnson Excavating

Policy Revision 3 (September 2011)

Case ID No. 46598

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105694665

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	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 judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	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)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 28-Mar-2013

Docket No. 2013-0694-MLM-E

PCW

Respondent Johnny D. Johnson dba Johnson Excavating

Policy Revision 3 (September 2011)

Case ID No. 46598

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105694665

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

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 the Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR050000.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 24

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,250

One monthly event is recommended from the period of March 4, 2013 (investigation date) to March 28, 2013 (date of screening).

Good Faith Efforts to Comply

10.0% Reduction

\$125

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

Notes The Respondent returned to compliance on July 9, 2013.

Violation Subtotal \$1,125

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$35

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent Johnny D. Johnson dba Johnson Excavating
Case ID No. 46598
Reg. Ent. Reference No. RN105694665
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	4-Mar-2013	9-Jul-2013	0.35	\$35	n/a	\$35
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of obtaining authorization to discharge stormwater associated with industrial activities under TPDES Multi-Sector General Permit No. TXR050000. Date required is the investigation date. Final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$35

Screening Date 28-Mar-2013

Docket No. 2013-0694-MLM-E

PCW

Respondent Johnny D. Johnson dba Johnson Excavating

Policy Revision 3 (September 2011)

Case ID No. 46598

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105694665

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.127(a)(1)

Violation Description Failed to register above ground storage tanks ("ASTs"). Specifically, the Respondent owns and operates a 10,000 gallon and a 2,000 gallon AST.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0.0%
Potential					

>> Programmatic Matrix

OR	Falsification	Harm			Percent
		Major	Moderate	Minor	
Actual		x			5.0%
Potential					

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 24

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,125

This violation Final Assessed Penalty (adjusted for limits) \$1,125

Economic Benefit Worksheet

Respondent Johnny D. Johnson dba Johnson Excavating
Case ID No. 46598
Reg. Ent. Reference No. RN105694665
Media Water Quality
Violation No. 2

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	\$100	4-Mar-2013	24-May-2013	0.22	\$1	n/a	\$1
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to register the ASTs with the TCEQ. The date required is the investigation date. 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

\$100

TOTAL

\$1

Screening Date 28-Mar-2013

Docket No. 2013-0694-MLM-E

PCW

Respondent Johnny D. Johnson dba Johnson Excavating

Policy Revision 3 (September 2011)

Case ID No. 46598

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105694665

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 3

Rule Cite(s) Tex. Water Code § 26.121(a)

Violation Description Failed to prevent an unauthorized discharge into or adjacent to water in the state. Specifically, it was noted that sediment discharged into Conner Spring Branch Creek. The sediment filled the creek and travelled beyond the property boundary to an adjacent property. It was noted that there is an eroded channel in the sand that extended into a wooded area.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes Human health or the environment has been exposed significant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 Number of violation days 24

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One monthly event is recommended from March 4, 2013 (investigation date) to March 28, 2013 (date of screening).

Good Faith Efforts to Comply

10.0% Reduction

\$375

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

Notes The Respondent returned to compliance on July 10, 2013.

Violation Subtotal \$3,375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$53

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

Economic Benefit Worksheet

Respondent Johnny D. Johnson dba Johnson Excavating
Case ID No. 46598
Reg. Ent. Reference No. RN105694665
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				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	\$3,000	4-Mar-2013	10-Jul-2013	0.35	\$53	n/a	\$53
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove sediment from the creek, add sand to the eroded channel, construct a silt fence, build a dam around the sand pit, and plant brown top millet grass. Date required is the investigation date. 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

\$3,000

TOTAL

\$53

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 CN603469537, RN105694665, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603469537, Johnson, Johnny D dba Johnson Excavating **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN105694665, JOHNSON EXCAVATING DIRT PIT **Classification:** HIGH **Rating:** 0.00

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 04 - Mining

Location: N SIDE OF TEXAS 103, 0.25 MI W OF MCCARTY RD LUFKIN, ANGELINA COUNTY, TEXAS

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):

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

Date Compliance History Report Prepared: April 03, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 03, 2008 to April 03, 2013

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

Name: Cheryl Thompson **Phone:** (817) 588-5886

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

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

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

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CEEDS Inv. Track. No.):
N/A

E. Written notices of violations (NOV) (CEEDS 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
JOHNNY D. JOHNSON DBA
JOHNSON EXCAVATING
RN105694665**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2013-0694-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 Johnny D. Johnson dba Johnson Excavating ("Respondent") under the authority of 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, because he is the owner, as defined in TEX. WATER CODE § 28A.001(6) and (5), of an aggregate production operation located on the north side of Texas 103, 0.25 mile west of McCarty Road in Lufkin, Angelina County, Texas (the "Site"). Aggregates are being or have been removed or extracted from the Site's earth. Therefore, the Site is an aggregate production operation as defined in TEX. WATER. CODE § 28A.001(1).
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Respondent's two aboveground storage tanks ("ASTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
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 March 22, 2013.
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 Ten Thousand One Hundred Twenty-Five Dollars (\$10,125) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Thousand One Hundred Dollars (\$8,100) of the administrative penalty and Two Thousand Twenty-Five Dollars (\$2,025) 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. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
 - a. By May 24, 2013, registered the 10,000 gallon and 2,000 gallon ASTs with the TCEQ.
 - b. On July 9, 2013:
 - i. Obtained authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit No. TXR05BV12; and
 - ii. Registered the Site as an aggregate production operation.
 - c. By July 10, 2013, removed sediment from Conner Spring Branch Creek, added sand to the eroded channel, constructed a silt fence, and built a dam around the sand pit.
9. 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.
10. 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).
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 owner and operator of the Site, the Respondent is alleged to have:

1. Failed to obtain authorization to discharge stormwater associated with industrial activities under the 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 March 4, 2013.
2. Failed to register the Site as an aggregate production operation by October 30, 2012, in violation of 30 TEX. ADMIN. CODE § 342.25(a), as documented during an investigation conducted on March 4, 2013.
3. Failed to register the ASTs, in violation of 30 TEX. ADMIN. CODE § 334.127(a)(1), as documented during an investigation conducted on March 4, 2013. Specifically, the Respondent owns and operates a 10,000 gallon and a 2,000 gallon AST.
4. Failed to prevent an unauthorized discharge into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on March 4, 2013. Specifically, it was noted that sediment discharged into Conner Spring Branch Creek. The sediment filled the creek and travelled beyond the property boundary to an adjacent property. It was noted that there is an eroded channel in the sand that extended into a wooded area.

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: Johnny D. Johnson dba Johnson Excavating, Docket No. 2013-0694-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. 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 Site operations referenced in this Agreed Order.
3. 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.
4. 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.
5. 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.

Johnny D. Johnson dba Johnson Excavating
DOCKET NO. 2013-0694-MLM-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date


For the Executive Director

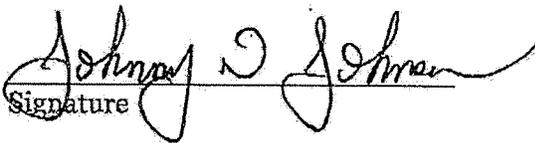
11/3/15
Date

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.


Signature

11/02/2015
Date

Johnny D. Johnson
Name (Printed or typed)
Authorized Representative of
Johnny D. Johnson dba Johnson Excavating

Owner
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.