

**Executive Summary – Enforcement Matter – Case No. 49920
Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC.
RN101499879
Docket No. 2015-0095-EAQ-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Austin Landscape Supply, 5317 South IH-35, Georgetown, Williamson County

Type of Operation:

Landscape supply site

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: January 1, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$45,900

Amount Deferred for Expedited Settlement: \$9,180

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$1,020

Total Due to General Revenue: \$35,700

Payment Plan: 35 payments of \$1,020 each

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: October 15, 2014 through October 20, 2014

Date(s) of NOE(s): December 17, 2014

**Executive Summary – Enforcement Matter – Case No. 49920
Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC.
RN101499879
Docket No. 2015-0095-EAQ-E**

Violation Information

Failed to obtain authorization prior to commencing regulated activities over the Edwards Aquifer Recharge Zone. Specifically, buildings, canopy structures, compacted base parking, mulching activities, and two aboveground storage tanks were installed disturbing approximately 8.04 acres of land [30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.5(a)(4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondents to:

- a. Immediately, cease any regulated activity at the Site until such time that an Edwards Aquifer Protection Plan (“EAPP”) application and associated Water Pollution Abatement Plan (“WPAP”) and Aboveground Storage Tank Plan (“ASTP”) have been reviewed and approved by the TCEQ Austin Regional Office.
- b. Within 30 days:
 - i. Submit an EAPP application and associated WPAP and ASTP; and
 - ii. Respond completely and adequately to all requests for additional information within 30 days of such request or by any other specified in writing.
- c. Within 45 days, submit written certification of compliance with a. and b.
- d. Within 120 days, submit written certification that authorization has been obtained.

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

**Executive Summary – Enforcement Matter – Case No. 49920
Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC.
RN101499879
Docket No. 2015-0095-EAQ-E**

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483

TCEQ SEP Coordinator: N/A

Respondent: Kenneth Patrick Whittlesey, President, WKP ENTERPRISES, INC., 5317 South IH-35, Georgetown, Texas 78626

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	5-Jan-2015	Screening	12-Jan-2015	EPA Due	
	PCW	15-Jan-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC.		
Reg. Ent. Ref. No.	RN101499879		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	49920	No. of Violations	1
Docket No.	2015-0095-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$45,000
---	-------------------	----------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	2.0% Enhancement	Subtotals 2, 3, & 7	\$900
---------------------------	------------------	--------------------------------	-------

Notes: Enhancement for one NOV with dissimilar violations.

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

Notes: The Respondents do 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: \$312
 Estimated Cost of Compliance: \$6,300
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$45,900
-----------------------------	-----------------------	----------

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$45,900
-----------------------------	----------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$45,900
-----------------------------------	-------------------------------	----------

DEFERRAL	20.0% Reduction	Adjustment	-\$9,180
-----------------	-----------------	-------------------	----------

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$36,720
------------------------	----------

Screening Date 12-Jan-2015

Docket No. 2015-0095-EAQ-E

PCW

Respondent Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC.

Policy Revision 4 (April 2014)

Case ID No. 49920

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101499879

Media [Statute] Edwards Aquifer

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	1	2%
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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations.

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

Final Adjustment Percentage *capped at 100% 2%

Screening Date 12-Jan-2015

Docket No. 2015-0095-EAQ-E

PCW

Respondent Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC.

Policy Revision 4 (April 2014)

Case ID No. 49920

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101499879

Media [Statute] Edwards Aquifer

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 213.4(a)(1) and 213.5(a)(4)

Violation Description Failed to obtain authorization prior to commencing regulated activities over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on October 15 through October 20, 2014. Specifically, buildings, canopy structures, compacted base parking, mulching activities, and two aboveground storage tanks were installed disturbing approximately 8.04 acres of land.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor)

Percent 0.0%

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 12

84 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event

Violation Base Penalty \$45,000

Twelve weekly events are recommended from the last date of the investigation, October 20, 2014, to the January 12, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

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

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$45,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$312

Violation Final Penalty Total \$45,900

This violation Final Assessed Penalty (adjusted for limits) \$45,900

Economic Benefit Worksheet

Respondent Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC.
Case ID No. 49920
Reg. Ent. Reference No. RN101499879
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				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	\$6,300	20-Oct-2014	17-Oct-2015	0.99	\$312	n/a	\$312
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit an Edwards Aquifer Protection Plan application and associated Water Pollution Abatement Plan and Aboveground Storage Tank Plan, and obtain authorization. Date required is the last date of the investigation. 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

\$6,300

TOTAL

\$312

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 CN601441538, RN101499879, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN601441538, Whittlesey, Kenneth Patrick
Classification: SATISFACTORY **Rating:** 14.00

Regulated Entity: RN101499879, Austin Landscape Supply
Classification: SATISFACTORY **Rating:** 14.00

Complexity Points: 2
Repeat Violator: NO

CH Group: 14 - Other

Location: 5317 SOUTH INTERSTATE HIGHWAY 35 IN GEORGETOWN, WILLIAMSON COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION

REGISTRATION 74261

EDWARDS AQUIFER PERMIT 11-95120501

STORMWATER PERMIT TXR05CF17

EDWARDS AQUIFER PERMIT 11-01110905

EDWARDS AQUIFER PERMIT 11-95060903

WATER QUALITY NON PERMITTED ID NUMBER R11101499879

MUNICIPAL SOLID WASTE PROCESSING REGISTRATION

100428

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: July 22, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 22, 2010 to July 22, 2015

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? YES
- 3) If **YES** for #2, who is the current owner/operator? WKP ENTERPRISES, INC. OWNER OPERATOR since 9/1/2011
WHITTLESEY, KENNETH PATRICK OWNER since 12/5/1995
Cinco J., Inc. OWNER since 11/9/2001
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? Cinco J., Inc., OWNER, 5/22/2006 to 9/1/2011
Cinco J., Inc., OWNER, 8/31/1987 to 8/31/2011
- 5) If **YES**, when did the change(s) in owner or operator occur? 9/1/2011

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.):

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 01/02/2015 (1205569)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 332, SubChapter A 332.8(b)(1)
Description: Failure to maintain a setback distance of at least 50 feet from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product.

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

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 CN603965930, RN101499879, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN603965930, WKP ENTERPRISES, INC. **Classification:** SATISFACTORY **Rating:** 14.00

Regulated Entity: RN101499879, Austin Landscape SUPPLY **Classification:** SATISFACTORY **Rating:** 14.00

Complexity Points: 2 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 5317 SOUTH INTERSTATE HIGHWAY 35 IN GEORGETOWN, WILLIAMSON COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 74261

EDWARDS AQUIFER PERMIT 11-95120501

STORMWATER PERMIT TXR05CF17

EDWARDS AQUIFER PERMIT 11-01110905

EDWARDS AQUIFER PERMIT 11-95060903

WATER QUALITY NON PERMITTED ID NUMBER
R11101499879

MUNICIPAL SOLID WASTE PROCESSING REGISTRATION
100428

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: July 22, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 22, 2010 to July 22, 2015

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? YES
- 3) If **YES** for #2, who is the current owner/operator? WKP ENTERPRISES, INC. OWNER OPERATOR since 9/1/2011
WHITTLESEY, KENNETH PATRICK OWNER since 12/5/1995
Cinco J., Inc. OWNER since 11/9/2001
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? Cinco J., Inc., OWNER, 5/22/2006 to 9/1/2011
Cinco J., Inc., OWNER, 8/31/1987 to 8/31/2011
- 5) If **YES**, when did the change(s) in owner or operator occur? 9/1/2011

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.):

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 01/02/2015 (1205569)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 332, SubChapter A 332.8(b)(1)
Description: Failure to maintain a setback distance of at least 50 feet from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product.

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
KENNETH PATRICK
WHITTLESEY AND WKP
ENTERPRISES, INC.
RN101499879**

§
§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2015-0095-EAQ-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 Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC. ("Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents together stipulate that:

1. The Respondents own and operate a landscape supply site located at 5317 South Interstate Highway 35 in Georgetown, Williamson County, Texas (the "Site").
2. The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
3. The Executive Director and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about December 22, 2014.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Forty-Five Thousand Nine Hundred Dollars (\$45,900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Thousand Twenty Dollars (\$1,020) of the administrative penalty and Nine Thousand One Hundred Eighty Dollars (\$9,180) is deferred contingent upon the Respondents timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondents fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

The remaining amount of Thirty-Five Thousand Seven Hundred Dollars (\$35,700) of the administrative penalty shall be payable in 35 monthly payments of One Thousand Twenty Dollars (\$1,020) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondents to meet the payment schedule of this Agreed Order constitutes the failure by the Respondents to timely and satisfactorily comply with all the terms of this Agreed Order.

7. 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.
8. The Executive Director and the Respondents 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).
9. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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 Respondents are alleged to have failed to obtain authorization prior to commencing regulated activities over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.5(a)(4), as documented during an investigation conducted October 15 through October 20, 2014. Specifically, buildings, canopy structures, compacted base parking, mulching activities, and two aboveground storage tanks were installed disturbing approximately 8.04 acres of land.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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: Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC., Docket No. 2015-0095-EAQ-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 Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease any regulated activity, as defined in 30 TEX. ADMIN. CODE § 213.3(28), at the Site until such time that an Edwards Aquifer Protection Plan ("EAPP") application and associated Water Pollution Abatement Plan ("WPAP") and Aboveground Storage Tank Plan ("ASTP") have been reviewed and approved by the TCEQ Austin Regional Office.
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Submit an EAPP application and associated WPAP and ASTP, in accordance with 30 TEX. ADMIN. CODE §§ 213.4 and 213.5 to:

Edwards Aquifer Protection Program
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - ii. Respond completely and adequately to all requests for additional information within 30 days of such request, or by any other specified in writing.

- c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions Nos. 3.a. and 3.b., in accordance with Ordering Provisions No. 3.e. below.
- d. Within 120 days after the effective date of this Agreed Order, submit written certification of compliance that authorization has been obtained, in accordance with Ordering Provisions No. 3.e. below.
- e. The written certifications required by Ordering Provisions Nos. 3.c. and 3.d., shall be notarized by a State of Texas Notary Public and include detailed supporting documentation including photographs, receipts, and/or other records, and 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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.
5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
8. 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.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Pam Maniv J
For the Executive Director

3/25/16
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.

Kenneth Patrick Whittlesey
Signature

1/22/2016
Date

Kenneth Patrick Whittlesey
Name (Printed or typed)
Authorized Representative of
Kenneth Patrick Whittlesey

President
Title

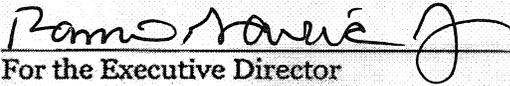
Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

3/25/16

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

1/22/2016

Date

Kenneth Patrick Whittlesey

Name (Printed or typed)
Authorized Representative of
WKP ENTERPRISES, INC.

President

Title

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