

Binh Pham
RN107752131
Docket No. 2015-0660-WQ-E

Order Type:

Default Order

Media:

WQ

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

located approximately 0.75 mile from the intersection of Manning Lane and State Highway 21,
Crockett, Houston County

Type of Operation:

farm land

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: April 8, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$8,263

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$8,263

Compliance History Classifications:

Person/CN – N/A
Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): December 1, 2014

Complaint Information: Alleged water runoff onto complainant's property and that Respondent may not have been permitted to begin construction.

Date(s) of Investigation: March 20, 2015; April 13, 2015

Date(s) of NOV(s): January 12, 2015; February 17, 2015

Date(s) of NOE(s): April 3, 2015

**Binh Pham
RN107752131
Docket No. 2015-0660-WQ-E**

Violation Information

1. Failed to implement and maintain effective sediment controls at the Site [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and Texas Pollutant Discharge Elimination System ("TPDES") General Permit ("GP") No. TXR150013353, Part III, Section F(2)(a)(i) and (ii), Section F(4)(d), Section F(6)(a), and Part VII, Nos. 1 and 9].
2. Failed to include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site, including estimated start dates and duration of activities in the Site's storm water pollution prevention plan ("SWP3") [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(1)(c)].
3. Failed to include data describing the soil or the quality of any discharge from the Site in the Site's SWP3 [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(1)(e)].
4. Failed to include the locations of construction support activities, including off-site activities that are authorized under the NOI, including material, waste, borrow, fill, or equipment or chemical storage areas in the site map [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(1)(g)(v)].
5. Failed to include the NOI and acknowledgement certificate for primary operators of large construction sites [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(1)(k)].
6. Failed to prevent an unauthorized discharge of waste into or adjacent to water in the state [TEX. WATER CODE § 26.121.(a)(1); 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c), and TPDES GP No. TXR150013353, Part III, Section F(2)(c)(i)(B), Section F(4)(e), F(6)(a), Section G(1), and Part VII Nos. 1, 8, and 9].
7. Failed to include a description of any sediment control practices used to remove eroded soils from storm water runoff and to include the capacity calculations for the Site's sedimentation basins in the Sites SWP3 [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(2)(c) and F(2)(c)(i)(A)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

N/A - Respondent no longer owns the Site as of April 2, 2015.

Litigation Information

Date Petition(s) Filed: November 24, 2015

Date Green Card(s) Signed: November 27, 2015

Date Answer(s) Filed: N/A

Contact Information

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

TCEQ Enforcement Coordinator: Christopher Bost, Enforcement Division, (512) 239-4575

TCEQ Regional Contact: Ronald Hebert, Beaumont Regional Office, (409) 898-3838

Respondent Contact: Binh Pham, 1004 Pebbles Court, Arlington, Texas 76013

Respondent's Attorney: Tom Rorie, 210 North Street, Nacogdoches, Texas 75961



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	6-Apr-2015	
	PCW	14-Sep-2015	Screening 13-Apr-2015 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Binh Pham
Reg. Ent. Ref. No.	RN107752131
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	50443	No. of Violations	7
Docket No.	2015-0660-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Christopher Bost
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	10.0%	Enhancement	Subtotals 2, 3, & 7	\$475
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Notes: Enhancement for two NOV's with same/similar violations.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$3,065
Estimated Cost of Compliance: \$7,500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,225
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OTHER FACTORS AS JUSTICE MAY REQUIRE	58.1%	Adjustment	\$3,038
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs associated with Violation Nos. 1 and 2.

Final Penalty Amount	\$8,263
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,263
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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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	\$8,263
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Screening Date	13-Apr-2015	Docket No.	2015-0660-WQ-E	PCW
Respondent	Binh Pham	Policy Revision 4 (April 2014)		
Case ID No.	50443	PCW Revision March 26, 2014		
Reg. Ent. Reference No.	RN107752131			
Media [Statute]	Water Quality			
Enf. Coordinator	Christopher Bost			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes	Enhancement for two NOVs with same/similar violations.
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Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 10%

>> Final Compliance History Adjustment

Final Adjustment Percentage **capped at 100%* 10%

Screening Date 13-Apr-2015 Respondent Binh Pham Case ID No. 50443 Reg. Ent. Reference No. RN107752131 Media [Statute] Water Quality Enf. Coordinator Christopher Bost	Docket No. 2015-0660-WQ-E	PCW <i>Policy Revision 4 (April 2014)</i> <i>PCW Revision March 26, 2014</i>
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Violation Number	1	Rule Cite(s)		
		30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit ("GP") No. TXR150013353, Part III, Section F(2)(a)(i) and (ii), Section F(4)(d), Section F(6)(a), and Part VII, Nos. 1 and 9		
Violation Description		Failed to implement and maintain effective sediment controls at the Site, as documented during an investigation conducted on March 20, 2015. Specifically, excavated soil from the second sedimentation basin ("Basin No. 2") had been piled up on the inflow side of the basin, creating a wall that would allow for stormwater to divert around the basin instead of into the basin. In addition, no velocity dissipation devices were installed on the inflow side of both sedimentation basins.		
Base Penalty			\$25,000	

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
Adjustment					\$23,750

Violation Events

Number of Violation Events	1	13	Number of violation days	
<i>mark only one with an x</i>	daily			
	weekly			
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
Violation Base Penalty				\$1,250

One quarterly event is recommended from the March 20, 2015 investigation date to the date the Site was sold (April 2, 2015).

Good Faith Efforts to Comply

	0.0%	
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal		\$1,250

Economic Benefit (EB) for this violation

	Statutory Limit Test
Estimated EB Amount	\$2,013
	Violation Final Penalty Total
	\$2,174
This violation Final Assessed Penalty (adjusted for limits)	
\$2,174	

Economic Benefit Worksheet

Respondent Binh Pham
Case ID No. 50443
Reg. Ent. Reference No. RN107752131
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$500	8-Dec-2014	16-Jan-2016	1.11	\$28	n/a	\$28
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to complete and submit a Notice of Termination. Date required is the date of the initial investigation and final date is the estimated date of compliance.

Avoided Costs

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

Disposal	\$1,000	8-Dec-2014	2-Apr-2015	0.32	\$16	\$315	\$331
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment	\$5,000	8-Dec-2014	2-Apr-2015	0.32	\$79	\$1,575	\$1,654
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

The first avoided cost includes the estimated amount to remove and properly dispose of the excavated soil located on the inflow side of Basin No. 2, sediment discharged offsite into the roadside ditch located at the entrance of the property, sediment deposits located along the silt fencing erected along the outflow sides of Basin Nos. 1 and 2, and sediment discharged into the intermittent stream. Date required is the date of the initial investigation and final date is the date the Site was sold.

The second avoided cost includes the estimated amount to install velocity dissipation devices on the inflow side of both sedimentation basins; re-install the Site's existing silt fencing to ensure that the fencing retains sediment on-site; design and begin utilizing appropriate controls to minimize the offsite transport of suspended sediments and other pollutants from the Site; and install perimeter controls at the Site, including at the Site's entrance, to minimize sediment transport from the Site. Date required is the date of the initial investigation and final date is the date the Site was sold.

Approx. Cost of Compliance

\$6,500

TOTAL

\$2,013

Screening Date	13-Apr-2015	Docket No.	2015-0660-WQ-E	PCW
Respondent	Binh Pham	Policy Revision 4 (April 2014)		
Case ID No.	50443	PCW Revision March 26, 2014		
Reg. Ent. Reference No.	RN107752131			
Media [Statute]	Water Quality			
Enf. Coordinator	Christopher Bost			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and TPDES GP No. TXR150013353, Part III, Section F(1)(c)			
Violation Description	Failed to include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site, including estimated start dates and duration of activities in the Site's stormwater pollution prevention plan ("SWP3"), as documented during an investigation conducted on March 20, 2015. Specifically, while the Site's SWP3 contained a sequence of soil disturbing activities, it did not include information specifying the estimated start dates and duration of the activities.			
		Base Penalty	\$25,000	

>> Environmental, Property and Human Health Matrix

OR	Release	Major	Harm Moderate	Minor		
	Actual					
	Potential					
					Percent	0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor			
			x			
					Percent	1.0%

Matrix Notes	At least 70% of the permit requirement was met.
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Adjustment	\$24,750
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\$250

Violation Events

Number of Violation Events	1		Number of violation days	13
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mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$250

One single event is recommended.

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 \$250

Economic Benefit (EB) for this violation

Estimated EB Amount	\$1,053	Statutory Limit Test	
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Violation Final Penalty Total	\$435
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This violation Final Assessed Penalty (adjusted for limits) \$435

Economic Benefit Worksheet

Respondent Binh Pham
Case ID No. 50443
Reg. Ent. Reference No. RN107752131
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1.

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]	\$1,000	11-Feb-2015	2-Apr-2015	1.05	\$53	\$1,000	\$1,053
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to obtain a copy of the completed notice of intent and acknowledgement certificate; update the site map to incorporate the locations of construction materials, waste, equipment, fill, or chemical/fuel storage areas and the sedimentation basins; and update the Site's SWP3 to incorporate the estimated start dates and duration of soil disturbing activities, data describing the soil or the quality of any discharge from the Site, a description of the Site's sedimentation basins and the capacity calculations for the basins, the updated site map, and a copy of the notice of intent and acknowledgement certificate. Date required is the record review date and final date is the date the Site was sold.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,053

Screening Date 13-Apr-2015

Docket No. 2015-0660-WQ-E

PCW

Respondent Binh Pham

Policy Revision 4 (April 2014)

Case ID No. 50443

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107752131

Media [Statute] Water Quality

Enf. Coordinator Christopher Bost

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and TPDES GP No. TXR150013353, Part III, Section F(1)(e)

Violation Description Failed to include data describing the soil or the quality of any discharge from the Site in the Site's SWP3, as documented during an investigation conducted on March 20, 2015.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			x

Percent 1.0%

Matrix Notes

At least 70% of the permit requirement was met.

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 1

13 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$435

This violation Final Assessed Penalty (adjusted for limits) \$435

Economic Benefit Worksheet

Respondent Binh Pham
Case ID No. 50443
Reg. Ent. Reference No. RN107752131
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1.

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

See Economic Benefit for Violation No. 2.

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date	13-Apr-2015	Docket No.	2015-0660-WQ-E
Respondent	Binh Pham		
Case ID No.	50443		
Reg. Ent. Reference No.	RN107752131		
Media [Statute]	Water Quality		
Enf. Coordinator	Christopher Bost		
Violation Number	4		
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and TPDES GP No. TXR150013353, Part III, Section F(1)(g)(v)		
Violation Description	Failed to include the locations of construction support activities, including off-site activities that are authorized under the Respondent's Notice of Intent ("NOI"), including material, waste, borrow, fill, or equipment or chemical storage areas in the site map, as documented during an investigation conducted on March 20, 2015. Specifically, the site map did not include locations of construction materials, waste, equipment, fill, or chemical/fuel storage areas and the Site's sedimentation basins.		
		Base Penalty	\$25,000

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				
	Potential				Percent
					0.0%

>> Programmatic Matrix

Matrix Notes		Falsification	Major	Moderate	Minor	
					x	
						Percent
						1.0%
	At least 70% of the permit requirement was met.					
		Adjustment				\$24,750

\$250

Violation Events

Number of Violation Events	1	13	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
One single event is recommended.			

Good Faith Efforts to Comply

	0.0%	
	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	
		\$250

Economic Benefit (EB) for this violation

Estimated EB Amount	Violation Final Penalty Total
\$0	\$435
This violation Final Assessed Penalty (adjusted for limits)	
\$435	

Economic Benefit Worksheet

Respondent Binh Pham
Case ID No. 50443
Reg. Ent. Reference No. RN107752131
Media Water Quality
Violation No. 4

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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1.

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

See Economic Benefit for Violation No. 2.

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 13-Apr-2015

Docket No. 2015-0660-WQ-E

PCW

Respondent Binh Pham

Policy Revision 4 (April 2014)

Case ID No. 50443

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107752131

Media [Statute] Water Quality

Enf. Coordinator Christopher Bost

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and TPDES GP No. TXR150013353, Part III, Section F(1)(k)

Violation Description

Failed to include the NOI and acknowledgement certificate for primary operators of large construction sites, as documented during an investigation conducted on March 20, 2015. Specifically, the Respondent failed to include a copy of the NOI and acknowledgement certificate in the Site's SWP3.

Base Penalty \$25,000

>> 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 1.0%

Matrix Notes

At least 70% of the permit requirement was met.

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 1

13

Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$435

This violation Final Assessed Penalty (adjusted for limits) \$435

Economic Benefit Worksheet

Respondent Binh Pham
Case ID No. 50443
Reg. Ent. Reference No. RN107752131
Media Water Quality
Violation No. 5

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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1.

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

See Economic Benefit for Violation No. 2.

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 13-Apr-2015

Docket No. 2015-0660-WQ-E

PCW

Respondent Binh Pham

Policy Revision 4 (April 2014)

Case ID No. 50443

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107752131

Media [Statute] Water Quality

Enf. Coordinator Christopher Bost

Violation Number 6

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and TPDES GP No. TXR150013353, Part III, Section F(2)(c)(i)(B), Section F(4)(e), Section F(6)(a), Section G(1), and Part VII, Nos. 1, 8, and 9

Violation Description

Failed to prevent an unauthorized discharge of waste into or adjacent to water in the state, as documented during an investigation conducted on March 20, 2015. Specifically, the entrance to the Site was unstabilized, sediment control devices were not installed to prevent sediment discharges, and sediment had discharged into the roadside ditch at the Site's entrance. Sediment had bypassed the silt fencing located within the intermittent stream and traveled close to the first pond. The existing silt fencing erected on the outflow side of the first sedimentation basin ("Basin No. 1") showed signs of sediment bypasses through soil staining at the top of the fencing in two spots and sediment deposits on the downstream side of these two spots. A section of the silt fencing installed on the outflow side of Basin No. 2 had gaps at the bottom of the fencing and there was evidence of sediment bypasses.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 13 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the March 20, 2015 investigation date to the date the Site was sold (April 2, 2015).

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$2,174

This violation Final Assessed Penalty (adjusted for limits) \$2,174

Economic Benefit Worksheet

Respondent Binh Pham
Case ID No. 50443
Reg. Ent. Reference No. RN107752131
Media Water Quality
Violation No. 6

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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1.

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

See Economic Benefit for Violation No. 1.

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date	13-Apr-2015	Docket No.	2015-0660-WQ-E	PCW	
Respondent	Binh Pham				<i>Policy Revision 4 (April 2014)</i>
Case ID No.	50443				<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN107752131				
Media [Statute]	Water Quality				
Enf. Coordinator	Christopher Bost				
Violation Number	7				
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and TPDES GP No. TXR150013353, Part III, Section F(2)(c) and F(2)(c)(i)(A)(1)				
Violation Description	<p>Failed to include a description of any sediment control practices used to remove eroded soils from stormwater runoff and to include the capacity calculations for the Site's sedimentation basins in the Site's SWP3, as documented during an investigation conducted on March 20, 2015 and a record review conducted on April 13, 2015. Specifically, the section of the Site's SWP3 describing sediment control devices did not list anything about installing the sedimentation basins. In addition, the capacity calculations for the sedimentation basins were not included in the SWP3.</p>				
		Base Penalty	\$25,000		

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				
	Potential				Percent 0.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 5.0%

Matrix Notes	100% of the permit requirement was not met.
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Adjustment	\$23,750
	\$1,250

Violation Events

Number of Violation Events	1	Number of violation days	13
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<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty	\$1,250
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One single event is recommended.

Good Faith Efforts to Comply

	0.0%			
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer		
Extraordinary				
Ordinary				
N/A	x	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			

Violation Subtotal	\$1,250
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Economic Benefit (EB) for this violation

Estimated EB Amount	\$0	Statutory Limit Test	
		Violation Final Penalty Total	\$2,174
		This violation Final Assessed Penalty (adjusted for limits)	\$2,174

Economic Benefit Worksheet

Respondent Binh Pham
Case ID No. 50443
Reg. Ent. Reference No. RN107752131
Media Water Quality
Violation No. 7

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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1.

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

See Economic Benefit for Violation No. 2.

Approx. Cost of Compliance \$0

TOTAL \$0

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 CN604682369, RN107752131, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604682369, Pham, Binh

Classification: N/A

Rating: N/A

Regulated Entity: RN107752131, Binh Pham Poultry Farm

Classification: N/A

Rating: N/A

Complexity Points: N/A

Repeat Violator: N/A

CH Group: 12 – Agriculture, Forestry, Fishing, and Hunting

Location: Located approximately 0.75 mile from the intersection of Manning Lane and State Highway 21 in Crockett, Houston County, Texas

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s): STORMWATER PERMIT TXR150013353

Compliance History Period: September 01, 2009 to August 31, 2014

Rating Year: 2014

Rating Date: 09/01/2014

Date Compliance History Report Prepared: July 07, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 07, 2010 to July 07, 2015

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

Name: Christopher Bost

Phone: (512) 239-4575

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) If YES for #2, who is the current owner/operator? John H. Allen and Anne Allen since 4/1/2015
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? Binh Pham 10/7/2014 to 3/31/2015
- 5) If YES, when did the change(s) in owner or operator occur? 4/1/2015

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.

1 Date: 01/12/2015 (1215321) CN604682369

Self Report? NO Classification: Minor

Citation: Part II, Section E(3)(c) PERMIT

Description: Failure to post the Large Construction Site Notice.

Self Report? NO

Citation: Part III, Section D(1) PERMIT

Description: Failure to maintain the Storm Water Pollution Prevention Plan (SWP3) on-site so that it is readily available for evaluation.

Self Report? NO

Citation: Part III, Section F(2)(a)(i) PERMIT

Description: Failure to design and install sediment control devices to retain sediment on-site to the extent practicable with the consideration for local topography.

Self Report? NO

Citation: Part III, Section F(6)(a) PERMIT

Description: Failure to properly maintain and/or install control measures.

2 Date: 02/17/2015 (1215321) CN604682369

Self Report? NO

Citation: Part II, Section E(3)(c) PERMIT

Description: Failure to post the Large Construction Site Notice.

Self Report? NO

Citation: Part III, Section F(2)(a)(i) PERMIT

Description: Failure to design and install sediment control devices to retain sediment on-site to the extent practicable with the consideration for local topography.

Self Report? NO
 Citation: Part III, Section F(6)(a) PERMIT
 Description: Failure to properly maintain and/or install control measures.
 Self Report? NO
 Citation: Part III, Section F(1)(c) PERMIT
 Description: Failure to include the estimated start dates and duration of construction activities.
 Self Report? NO
 Citation: Part III, Section F(1)(e) PERMIT
 Description: Failure to include data describing the soil or the quality of any discharge from the site in the Storm Water Pollution Prevention Plan (SWP3).
 Self Report? NO
 Citation: Part III, Section F(1)(g)(v) PERMIT
 Description: Failure to develop a site map with all the required information.
 Self Report? NO
 Citation: Part III, Section F(1)(k) PERMIT
 Description: Failure to include the completed Notice Of Intent and TCEQ Permit Acknowledgement certification with the Storm Water Pollution Prevention Plan (SWP3).

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
BINH PHAM;
RN107752131**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-0660-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 and 26 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 Binh Pham ("Respondent").

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

FINDINGS OF FACT

1. Respondent owned farm land located approximately 0.75 mile from the intersection of Manning Lane and State Highway 21 in Crockett, Houston County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. After an investigation conducted on March 20, 2015, and a record review conducted on April 13, 2015, an investigator documented that Respondent:
 - a. Failed to implement and maintain effective sediment controls at the Site. Specifically, excavated soil from the second sedimentation basin ("Basin No. 2") had been piled up on the inflow side of the basin, creating a wall that would allow for storm water to divert around the basin instead of into the basin. In addition, no velocity dissipation devices were installed on the inflow side of both sedimentation basins;
 - b. Failed to include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site, including estimated start dates and duration of activities in the Site's storm water pollution prevention plan ("SWP3"). Specifically, while the Site's SWP3 contained a sequence of soil disturbing activities, it did not include information specifying the estimated start dates and duration of the activities;
 - c. Failed to include data describing the soil or the quality of any discharge from the Site in the Site's SWP3;
 - d. Failed to include the locations of construction support activities, including off-site activities that are authorized under the Notice of Intent ("NOI"), including material, waste, borrow, fill, or equipment or chemical storage areas in the site map. Specifically, the site map did not include locations of construction materials, waste, equipment, fill, or chemical/fuel storage areas and the Site's sedimentation basins;

- e. Failed to include the NOI and acknowledgement certificate for primary operators of large construction sites. Specifically, Respondent failed to include a copy of the NOI and acknowledgement certificate in the Site's SWP3;
 - f. Failed to prevent an unauthorized discharge of waste into or adjacent to water in the state. Specifically, the entrance to the Site was un-stabilized, sediment control devices were not installed to prevent sediment discharges, and sediment had discharged into the roadside ditch at the Site's entrance. Sediment had bypassed the silt fencing located within the intermittent stream and traveled close to the first pond. The existing silt fencing erected on the outflow side of the first sedimentation basin ("Basin No. 1") showed signs of sediment bypasses through soil staining at the top of the fencing in two spots and sediment deposits on the downstream side of these two spots. A section of the silt fencing installed on the outflow side of Basin No. 2 had gaps at the bottom of the fencing and there was evidence of sediment bypasses; and
 - g. Failed to include a description of any sediment control practices used to remove eroded soils from storm water runoff and to include the capacity calculations for the Site's sedimentation basins in the Sites SWP3. Specifically, the section of the Site's SWP3 describing sediment control devices did not list anything about installing the sedimentation basins. In addition, the capacity calculations for the sedimentation basins were not included in the SWP3.
3. The Executive Director recognizes that Respondent no longer owns the Site as of April 2, 2015.
 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 and Requiring Certain Actions of Binh Pham" (the "EDPRP") in the TCEQ Chief Clerk's office on November 24, 2015.
 5. By letter dated November 24, 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 November 27, 2015, as evidenced by the signature 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 ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to implement and maintain effective sediment controls at the Site, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and Texas Pollutant Discharge Elimination System ("TPDES") General Permit ("GP") No. TXR150013353, Part III, Section F(2)(a)(i) and (ii), Section F(4)(d), Section F(6)(a), and Part VII, Nos. 1 and 9.

3. As evidenced by Finding of Fact No. 2.b., Respondent failed to include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site, including estimated start dates and duration of activities in the Site's SWP3, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(1)(c).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to include data describing the soil or the quality of any discharge from the Site in the Site's SWP3, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(1)(e).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to include the locations of construction support activities, including off-site activities that are authorized under the NOI, including material, waste, borrow, fill, or equipment or chemical storage areas in the site map, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(1)(g)(v).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to include the NOI and acknowledgement certificate for primary operators of large construction sites, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(1)(k).
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to prevent an unauthorized discharge of waste into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121.(a)(1); 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c), and TPDES GP No. TXR150013353, Part III, Section F(2)(c)(i)(B), Section F(4)(e), F(6)(a), Section G(1), and Part VII Nos. 1, 8, and 9.
8. As evidenced by Finding of Fact No. 2.g., Respondent failed to include a description of any sediment control practices used to remove eroded soils from storm water runoff and to include the capacity calculations for the Site's sedimentation basins in the Site's SWP3, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and TPDES GP No. TXR150013353, Part III, Section F(2)(c) and F(2)(c)(i)(A)(1).
9. 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).
10. 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.
11. 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.
12. An administrative penalty in the amount of eight thousand two hundred sixty-three dollars (\$8,263.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. 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 eight thousand two hundred sixty-three dollars (\$8,263.00) 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: Binh Pham; Docket No. 2015-0660-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.
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

Date

AFFIDAVIT OF JIM SALLANS

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

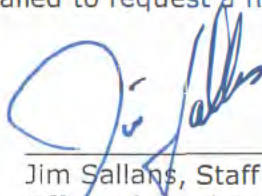
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"My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Binh Pham" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 24, 2015.

The EDPRP was mailed to Respondent's last known address on November 24, 2015, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 27, 2015, as evidenced by the signature on the card.

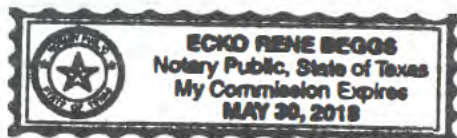
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Jim Sallans, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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 23rd day of March, A.D. 2016.



Notary without Bond



Notary Public, State of Texas