

**Executive Summary – Enforcement Matter – Case No. 50805**  
**WOODY BUTLER HOMES, INC.**  
**RN106081391**  
**Docket No. 2015-1042-WQ-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

**Media:**

WQ

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Imperial Estates, located at the intersection of Farm-to-Market Road 1695 and Sun Valley Drive, southeast 0.289 mile along Sun Valley Drive to Sapphire Boulevard on the left, thence northeast along Sapphire Boulevard, McLennan County

**Type of Operation:**

Construction site

**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:** January 29, 2016

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$2,400

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$2,400

**Total Due to General Revenue:** \$0

Payment Plan: N/A

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

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** April 2014

**Executive Summary – Enforcement Matter – Case No. 50805**  
**WOODY BUTLER HOMES, INC.**  
**RN106081391**  
**Docket No. 2015-1042-WQ-E**

***Investigation Information***

**Complaint Date(s):** May 27, 2015

**Complaint Information:** Alleged sediment and contaminants were being discharged on to their property by surrounding development.

**Date(s) of Investigation:** June 12, 2015

**Date(s) of NOE(s):** June 30, 2015

***Violation Information***

1. Failed to install minimum sediment controls for all down slope boundaries at the Site [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15YA95, Part III, Section F.2(c)(i)(B)].
2. Failed to maintain in effective operating condition all best management practices and remove sediment accumulations that escape the Site at a frequency that minimizes off-site impacts [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES General Permit No. TXR15YA95, Part III, Sections F(6)(a), F(6)(d) and G(1)(e)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

a. Within 30 days:

- i. Install structural controls on all down slope boundaries, including but not limited to, installing perimeter or equivalent sediment controls at 217 East Jade Drive;
- ii. Ensure the existing sediment and erosion controls identified in the Storm Water Pollution Prevention Plan are designed to retain sediment on-site to the extent practicable with consideration for local topography, soil type, and rainfall, including but not limited to, replacing and properly installing sediment controls along East Jade Drive; and
- iii. Remove and properly dispose of sediment accumulations from the street and around the storm drains located on East Jade Drive.

b. Within 45 days, submit written certification of compliance with a.

**Executive Summary – Enforcement Matter – Case No. 50805**  
**WOODY BUTLER HOMES, INC.**  
**RN106081391**  
**Docket No. 2015-1042-WQ-E**

***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:** Farhaud Abbaszadeh, Enforcement Division,  
Enforcement Team 1, MC 169, (512) 239-0779; Melissa Cordell, Enforcement Division,  
MC 219, (512) 239-2483  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Woody R. Butler, President, WOODY BUTLER HOMES, INC., 207 Sun  
Valley Boulevard, Hewitt, Texas 76643  
**Respondent's Attorney:** N/A



<b>TCEQ</b> <b>DATES</b>	<b>Assigned</b>	29-Jun-2015	<b>Screening</b>	9-Jul-2015	<b>EPA Due</b>	
	<b>PCW</b>	13-Jul-2015				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	WOODY BUTLER HOMES, INC.
<b>Reg. Ent. Ref. No.</b>	RN106081391
<b>Facility/Site Region</b>	9-Waco
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	50805	<b>No. of Violations</b>	2
<b>Docket No.</b>	2015-1042-WQ-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jennifer Graves
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

**Penalty Calculation Section**

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$2,000</b>
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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.

<b>Compliance History</b>	20.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$400</b>
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Notes: Enhancement for one order with denial of liability.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$145
Estimated Cost of Compliance	\$3,500

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$2,400</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$2,400</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$2,400</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	<b>\$2,400</b>
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Screening Date 9-Jul-2015

Docket No. 2015-1042-WQ-E

PCW

Respondent WOODY BUTLER HOMES, INC.

Policy Revision 4 (April 2014)

Case ID No. 50805

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106081391

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

### 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> )	1	20%
	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) 20%

>> 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 order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 20%

Screening Date 9-Jul-2015

Docket No. 2015-1042-WQ-E

PCW

Respondent WOODY BUTLER HOMES, INC.

Policy Revision 4 (April 2014)

Case ID No. 50805

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106081391

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15YA95, Part III, Section F.2(c)(i)(B)

Violation Description

Failed to install minimum sediment controls for all down slope boundaries at the Site, as documented during an investigation conducted on June 12, 2015. Specifically, the back yard of 217 East Jade Drive did not have sediment controls for down slope boundaries.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 3.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

Violation Events

Number of Violation Events 1

27 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$750

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 \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$62

Violation Final Penalty Total \$900

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

## Economic Benefit Worksheet

**Respondent** WOODY BUTLER HOMES, INC.  
**Case ID No.** 50805  
**Reg. Ent. Reference No.** RN106081391  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	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				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	12-Jun-2015	9-Apr-2016	0.83	\$62	n/a	\$62

**Notes for DELAYED costs**

Estimated cost to install structural controls on all down slope boundaries at 217 East Jade Drive. Date required is the investigation date and final date is the expected 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

\$1,500

**TOTAL**

\$62

Screening Date 9-Jul-2015

Docket No. 2015-1042-WQ-E

PCW

Respondent WOODY BUTLER HOMES, INC.

Policy Revision 4 (April 2014)

Case ID No. 50805

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106081391

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES General Permit No. TXR15YA95, Part III, Sections F(6)(a), F(6)(d), and G(1)(e)

Violation Description

Failed to maintain in effective operating condition all best management practices ("BMPs") and remove sediment accumulations that escape the Site at a frequency that minimizes off-site impacts, as documented during an investigation conducted on June 12, 2015. Specifically, silt fencing on the storm drains had holes and the kirlex matting at the curb of 217 East Jade Drive and 221 East Jade Drive was not properly installed and was failing. In addition, sediment accumulations were in the street and around the storm drains.

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	Harm		
	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

27 Number of violation days

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 investigation date (June 12, 2015) to the screening date (July 9, 2015).

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$83

Violation Final Penalty Total \$1,500

This violation Final Assessed Penalty (adjusted for limits) \$1,500

# Economic Benefit Worksheet

**Respondent** WOODY BUTLER HOMES, INC.  
**Case ID No.** 50805  
**Reg. Ent. Reference No.** RN106081391  
**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				0.00	\$0	n/a	\$0
Other (as needed)	\$2,000	12-Jun-2015	9-Apr-2016	0.83	\$83	n/a	\$83

#### Notes for DELAYED costs

Estimated cost to ensure the existing sediment and erosion controls identified in the BMPs are designed to retain sediment on-site to the extent practicable with consideration for local topography, soil type, and rainfall, including but not limited to, replacing and/or properly installing sediment controls along East Jade Drive. Additionally, estimated cost to remove and properly dispose of the sediment accumulation from the affected area. Date required is the investigation date and final date is the expected date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

**TOTAL**

\$83



# Compliance History Report

**PUBLISHED** Compliance History Report for CN602501306, RN106081391, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

**Customer, Respondent, or Owner/Operator:** CN602501306, Woody Butler Homes, Inc.      **Classification:** SATISFACTORY      **Rating:** 30.67

**Regulated Entity:** RN106081391, IMPERIAL ESTATES      **Classification:** SATISFACTORY      **Rating:** 30.67

**Complexity Points:** 5      **Repeat Violator:** NO

**CH Group:** 09 - Construction

**Location:** LOCATED AT THE INTERSECTION OF FM 1695 & SUN VALLEY DRIVE, SE 0.289 MILES ALONG SUN VALLEY DR TO SAPPHIRE BLVD ON THE LEFT, THENCE NE ALONG E SAPPHIRE BLVD TO THE JOB SITE MCLENNAN COUNTY, TEXAS

**TCEQ Region:** REGION 09 - WACO

**ID Number(s):**      **STORMWATER PERMIT**      TXR15YA95

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

**Date Compliance History Report Prepared:** August 13, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** August 13, 2010 to August 13, 2015

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

**Name:** Heather Brister

**Phone:** (817) 588-5825

**Site and Owner/Operator History:**

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

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

**A. Final Orders, court judgments, and consent decrees:**

1      Effective Date: **10/21/2013**      ADMINORDER 2013-0195-MLM-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failure to prevent the unauthorized disposal of municipal solid waste.

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: CGP Part II; Section E(3)(c) PERMIT

Description: Failure to post a copy of the notice of intent (NOI) at the construction site in a location where it is readily available for viewing.

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: CGP Part II; Section E(3)(d) PERMIT

Description: Failure to post a construction site notice at the site.

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: CGP Part III; Section F(2)(c)(i)(B) PERMIT

Description: Failure to install minimum sediment controls for all downslope boundaries at the site.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

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

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

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A





# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
WOODY BUTLER HOMES, INC.  
RN106081391**

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

## **AGREED ORDER DOCKET NO. 2015-1042-WQ-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding WOODY BUTLER HOMES, INC. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

### **I. FINDINGS OF FACT**

1. The Respondent operates a construction site located at the intersection of Farm-to-Market Road 1695 and Sun Valley Drive, southeast 0.289 mile along Sun Valley Drive to Sapphire Boulevard on the left, thence northeast along Sapphire Drive, McLennan County, Texas (the "Site").

2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on June 12, 2015, TCEQ staff documented that the back yard of 217 East Jade Drive did not have sediment controls for down slope boundaries.
4. During an investigation conducted on June 12, 2015, TCEQ staff documented that the silt fencing on the storm drains had holes and the kirlax matting at the curb of 217 East Jade Drive and 221 East Jade Drive was not properly installed and was failing. In addition, sediment accumulations were in the street and around the storm drains.
5. The Respondent received notice of the violations on July 2, 2015.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to install minimum sediment controls for all down slope boundaries at the Site, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15YA95, Part III, Section F.2(c)(i)(B).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to maintain in effective operating condition all best management practices ("BMPs") and remove sediment accumulations that escape the Site at a frequency that minimizes off-site impacts, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES General Permit No. TXR15YA95, Part III, Sections F(6)(a), F(6)(d) and G(1)(e).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Two Thousand Four Hundred Dollars (\$2,400) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Two Thousand Four Hundred Dollar (\$2,400) administrative penalty.

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Two Thousand Four Hundred Dollars (\$2,400) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: WOODY BUTLER HOMES, INC., Docket No. 2015-1042-WQ-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 Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Install structural controls on all down slope boundaries, including but not limited to, installing perimeter or equivalent sediment controls at 217 East Jade Drive;
    - ii. Ensure the existing sediment and erosion controls identified in the SWP3 are designed to retain sediment on-site to the extent practicable with consideration for local topography, soil type, and rainfall, including but not limited to, replacing and properly installing sediment controls along East Jade Drive; and
    - iii. Remove and properly dispose of sediment accumulations from the street and around the storm drains located on East Jade Drive.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions Nos. 2.a.i through 2.a.iii, in accordance with Ordering Provision No. 2.c below.
  - c. The certifications of compliance required by Ordering Provision No. 2.b, shall be notarized by a State of Texas Notary Public and include the following certification

language and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance:

"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  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

3. 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.
4. If the Respondent fails 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director.

The determination of what constitutes good cause rests solely with the Executive Director.

6. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.
9. 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.
10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, 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

*Pam Monica J*  
For the Executive Director

6/9/16  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of WOODY BUTLER HOMES, INC. I am authorized to agree to the attached Agreed Order on behalf of WOODY BUTLER HOMES, INC., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, WOODY BUTLER HOMES, INC. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

*Woody Butler*  
Signature

9-17-15  
Date

Woody Butler  
Name (Printed or typed)  
Authorized Representative of  
WOODY BUTLER HOMES, 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 III, Paragraph 1 of this Agreed Order.