

**Executive Summary – Enforcement Matter – Case No. 58019**  
**Kenneth Patrick Whittlesey**  
**RN109240887**  
**Docket No. 2019-1036-MLM-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MLM - EAQ, WQ

**Small Business:**

Yes

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

Austin Landscape Supplies Wholesale, located at 5501 Ranch-to-Market Road 2243, Georgetown, Williamson County

**Type of Operation:**

Landscape supply business

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** August 20, 2021

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$13,301

**Amount Deferred for Expedited Settlement:** \$2,659

**Total Paid to General Revenue:** \$317

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

Payment Plan: 35 payments of \$295 each

**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):** April 25, 2019, April 26, 2019, and August 30, 2019

**Complaint Information:** Alleged stormwater pond continually full of water after rain events and during rain events run-off occurs. Also alleges off-site stockpiling of mulch outside of the approved Water Pollution Abatement Plan ("WPAP").

**Date(s) of Investigation:** May 16, 2019 through May 23, 2019 and September 27, 2019

**Date(s) of NOE(s):** July 1, 2019 and November 21, 2019

**Executive Summary – Enforcement Matter – Case No. 58019**  
**Kenneth Patrick Whittlesey**  
**RN109240887**  
**Docket No. 2019-1036-MLM-E**

***Violation Information***

1. Failed to dewater the temporary sediment basin via irrigation within 72 hours of a rain event. Specifically, the sediment basin was full of water even though more than 72 hours had elapsed since the prior rain event [30 TEX. ADMIN. CODE § 213.4(k) and WPAP No. 11001173, Special Condition II].
2. Failed to submit proof of recordation of notice in the county deed records to the Austin Regional Office within 60 days of receiving written approval of a WPAP modification. Specifically, the proof of deed recordation was not submitted for the October 11, 2018 WPAP modification approval [30 TEX. ADMIN. CODE § 213.4(g) and (k) and WPAP No. 11001173, Standard Condition No. 4].
3. Failed to provide written notification of intent to commence construction no later than 48 hours prior to commencement of the regulated activity. Specifically, a notice of intent to commence construction was not provided to the Austin Regional Office [30 TEX. ADMIN. CODE §§ 213.4(k) and 213.5(f)(1) and WPAP No. 11001173, Standard Condition No. 7].
4. Failed to prevent a discharge of stormwater associated with industrial activities to any water in the state. Specifically, the Respondent was dewatering the sediment basin without proper controls in place and was dewatering offsite rather than onto mulch piles located onsite as approved by the WPAP [30 TEX. ADMIN. CODE § 213.4(k), TEX. WATER CODE § 26.121(a)(1), WPAP No. 11001173, Standard Condition No. 15, and Texas Pollutant Discharge Elimination System General Permit No. TXR05EH98, Part II, Section B No. 8].
5. Failed to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the Respondent had cleared and disturbed 1.2 acres of land to store piles of whole and chipped wood pallets and process mulch without approval [WPAP No. 11001173, Standard Conditions No. 6, and 30 TEX. ADMIN. CODE § 213.4(j) and (k)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent implemented the following corrective measures:

- a. By May 23, 2019, dewatered the temporary sediment basin and ceased the unauthorized discharge of stormwater;

**Executive Summary – Enforcement Matter – Case No. 58019**  
**Kenneth Patrick Whittlesey**  
**RN109240887**  
**Docket No. 2019-1036-MLM-E**

- b. By July 8, 2019, submitted the deed recordation for the October 11, 2018 WPAP modification approval;
- c. By October 8, 2019, submitted the delinquent notification of intent to commence construction to the Austin Regional Office; and
- d. By January 25, 2021, submitted a WPAP modification application for No. 11002409.

**Technical Requirements:**

The Order will require the Respondent to:

- a. Respond completely and adequately to all TCEQ requests for additional information regarding the application for WPAP modification No. 11002409 within 30 days of such requests, or any other deadline specified in writing.
- b. Within 30 days:
  - i. Submit written certification that approval of WPAP modification No. 11002409 has been obtained and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance; and
  - ii. In lieu of b.i., restore the 1.2 acres of land used to store piles of whole and chipped wood pallets and process mulch to previous undisturbed conditions, and submit written certification to demonstrate compliance.

**Contact Information**

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Harley Hobson, Enforcement Division, Enforcement Team 3, MC 219, (512) 239-1337; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** Kenneth Patrick Whittlesey, Owner, 5317 South IH-35, Georgetown, Texas 78626

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

## TCEQ

<b>DATES</b>	<b>Assigned</b>	8-Jul-2019	<b>Screening</b>	10-Jul-2019	<b>EPA Due</b>	
	<b>PCW</b>	2-Jun-2021				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Kenneth Patrick Whittlesey (PCW No. 1)		
<b>Reg. Ent. Ref. No.</b>	RN109240887		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	58019	<b>No. of Violations</b>	3
<b>Docket No.</b>	2019-1036-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Water Quality	<b>Enf. Coordinator</b>	Harley Hobson
		<b>EC's Team</b>	Enforcement Team 3
<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>\$11,250</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>	<b>2.0%</b>	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$225</b>
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<b>Notes</b>	Enhancement for one NOV with dissimilar violations.
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<b>Culpability</b>	No	<b>0.0%</b>	Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>-\$1,687</b>
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<b>Economic Benefit</b>	<b>0.0%</b>	Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$11	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$5,125	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$9,788</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b>	Adjustment	
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	<b>\$9,788</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$9,788</b>
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<b>DEFERRAL</b>	<b>20.0%</b>	Reduction	<b>Adjustment</b>	<b>-\$1,957</b>
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral offered for expedited settlement.
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<b>PAYABLE PENALTY</b>	<b>\$7,831</b>
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Screening Date 10-Jul-2019

Docket No. 2019-1036-MLM-E

PCW

Respondent Kenneth Patrick Whittlesey (PCW No. 1)

Policy Revision 4 (April 2014)

Case ID No. 58019

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109240887

Media Edwards Aquifer

Enf. Coordinator Harley Hobson

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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%
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 Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 2%

**Screening Date** 10-Jul-2019 **Docket No.** 2019-1036-MLM-E **PCW**  
**Respondent** Kenneth Patrick Whittlesey (PCW No. 1) *Policy Revision 4 (April 2014)*  
**Case ID No.** 58019 *PCW Revision March 26, 2014*  
**Reg. Ent. Reference No.** RN109240887  
**Media** Edwards Aquifer  
**Enf. Coordinator** Harley Hobson

**Violation Number** 1  
**Rule Cite(s)** 30 Tex. Admin. Code § 213.4(k) and Water Pollution Abatement Plan ("WPAP") No. 11001173, Special Condition II  
**Violation Description** Failed to dewater the temporary sediment basin via irrigation within 72 hours of a rain event. Specifically, the sediment basin was full of water even though more than 72 hours had elapsed since the prior rain event.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	<b>Actual</b>				<b>Percent</b> 15.0%
<b>Potential</b>		X			

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0.0%

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

**Adjustment** \$21,250

\$3,750

**Violation Events**

Number of Violation Events 1 7 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

**Violation Base Penalty** \$3,750

One quarterly event is recommended from the investigation start date (May 16, 2019) to the date of compliance (May 23, 2019).

**Good Faith Efforts to Comply** 25.0% Reduction \$937

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		

**Notes** The Respondent achieved compliance on May 23, 2019.

**Violation Subtotal** \$2,813

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$5 **Violation Final Penalty Total** \$2,888

**This violation Final Assessed Penalty (adjusted for limits)** \$2,888

## Economic Benefit Worksheet

**Respondent** Kenneth Patrick Whittlesey (PCW No. 1)  
**Case ID No.** 58019  
**Reg. Ent. Reference No.** RN109240887  
**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	Costs Saved	EB Amount
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### 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)	\$5,000	16-May-2019	23-May-2019	0.02	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to dewater the sediment basin. Date required is the investigation date. Final date is the date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$5

Screening Date 10-Jul-2019

Docket No. 2019-1036-MLM-E

PCW

Respondent Kenneth Patrick Whittlesey (PCW No. 1)

Policy Revision 4 (April 2014)

Case ID No. 58019

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109240887

Media Edwards Aquifer

Enf. Coordinator Harley Hobson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 213.4(g) and (k) and WPAP No. 11001173, Standard Condition No. 4

Violation Description Failed to submit proof of recordation of notice in the county deed records to the Austin Regional Office within 60 days of receiving written approval of a WPAP modification. Specifically, the proof of deed recordation was not submitted for the October 11, 2018 WPAP modification approval.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			X		
100% of the rule requirements were not met.					

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 210 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction \$375

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		

Notes The Respondent achieved compliance on July 8, 2019.

Violation Subtotal \$3,375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3 Violation Final Penalty Total \$3,450

This violation Final Assessed Penalty (adjusted for limits) \$3,450



## Economic Benefit Worksheet

**Respondent** Kenneth Patrick Whittlesey (PCW No. 1)  
**Case ID No.** 58019  
**Reg. Ent. Reference No.** RN109240887  
**Media** Edwards Aquifer  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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)	\$100	10-Dec-2018	8-Jul-2019	0.58	\$3	n/a	\$3

**Notes for DELAYED costs**

Estimated cost to submit proof of deed recordation for WPAP modification No. 11001173, to the Austin Regional Office. Date required is the date the required deed recordation was due. Final date is the date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$100

**TOTAL**

\$3

Screening Date 10-Jul-2019

Docket No. 2019-1036-MLM-E

PCW

Respondent Kenneth Patrick Whittlesey (PCW No. 1)

Policy Revision 4 (April 2014)

Case ID No. 58019

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109240887

Media Edwards Aquifer

Enf. Coordinator Harley Hobson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 213.4(k) and 213.5(f)(1) and WPAP No. 11001173, Standard Condition No. 7

Violation Description Failed to provide written notification of intent to commence construction no later than 48 hours prior to commencement of the regulated activity. Specifically, a notice of intent to commence construction was not provided to the Austin Regional Office.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			X		
100% of the rule requirements were not met.					

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 900 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

10.0%

Reduction \$375

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

Extraordinary	
Ordinary	X
N/A	

Notes The Respondent achieved compliance on October 8, 2019.

Violation Subtotal \$3,375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$3,450

This violation Final Assessed Penalty (adjusted for limits) \$3,450

## Economic Benefit Worksheet

**Respondent** Kenneth Patrick Whittlesey (PCW No. 1)  
**Case ID No.** 58019  
**Reg. Ent. Reference No.** RN109240887  
**Media** Edwards Aquifer  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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)	\$25	23-Jan-2017	8-Oct-2019	2.71	\$3	n/a	\$3

**Notes for DELAYED costs**

Estimated cost to provide written notification of intent to commence construction to the Austin Regional Office. Date required is the date regulated activity originally started. Final date is the date the Respondent notified the Region.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$25

**TOTAL**

\$3



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

## TCEQ

<b>DATES</b>	<b>Assigned</b>	8-Jul-2019	<b>Screening</b>	10-Jul-2019	<b>EPA Due</b>	
	<b>PCW</b>	2-Jun-2021				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Kenneth Patrick Whittlesey (PCW No. 2)		
<b>Reg. Ent. Ref. No.</b>	RN109240887		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	58019	<b>No. of Violations</b>	1
<b>Docket No.</b>	2019-1036-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Edwards Aquifer	<b>Enf. Coordinator</b>	Harley Hobson
		<b>EC's Team</b>	Enforcement Team 3
<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>	\$1,250
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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>	2.0%	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$25
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<b>Notes</b>	Enhancement for one NOV with dissimilar violations.
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<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	-\$312
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<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$0	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$25	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$963
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$963
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$963
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<b>DEFERRAL</b>	20.0%	Reduction	Adjustment	-\$192
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral offered for expedited settlement.
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<b>PAYABLE PENALTY</b>	\$771
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**Screening Date** 10-Jul-2019

**Docket No.** 2019-1036-MLM-E

**PCW**

**Respondent** Kenneth Patrick Whittlesey (PCW No. 2)

*Policy Revision 4 (April 2014)*

**Case ID No.** 58019

*PCW Revision March 26, 2014*

**Reg. Ent. Reference No.** RN109240887

**Media** Water Quality

**Enf. Coordinator** Harley Hobson

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Number	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%
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 Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 2%

**Screening Date** 10-Jul-2019 **Docket No.** 2019-1036-MLM-E **PCW**  
**Respondent** Kenneth Patrick Whittlesey (PCW No. 2) *Policy Revision 4 (April 2014)*  
**Case ID No.** 58019 *PCW Revision March 26, 2014*  
**Reg. Ent. Reference No.** RN109240887  
**Media** Water Quality  
**Enf. Coordinator** Harley Hobson

**Violation Number** 1

**Rule Cite(s)** Tex. Admin Code § 213.4(k), Tex. Water Code § 26.121(a)(1), Water Pollution Abatement Plan ("WPAP") No. 11001173, Standard Condition No. 15, and Texas Pollutant Discharge Elimination System General Permit No. TXR05EH98, Part II, Section B No. 8

**Violation Description** Failed to prevent a discharge of stormwater associated with industrial activities to any water in the state. Specifically, the Repondent was dewatering the sediment basin without proper controls in place and was dewatering offsite rather than onto mulch piles located onsite as approved by the WPAP.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

**>> 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 1 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,250

One quarterly event is recommended from the investigation end date (May 23, 2019) to the date of compliance (May 23, 2019).

**Good Faith Efforts to Comply** 25.0% Reduction \$312

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		

Notes: The Respondent achieved compliance on May 23, 2019.

**Violation Subtotal** \$938

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$0 **Violation Final Penalty Total** \$963

**This violation Final Assessed Penalty (adjusted for limits)** \$963

## Economic Benefit Worksheet

**Respondent** Kenneth Patrick Whittlesey (PCW No. 2)  
**Case ID No.** 58019  
**Reg. Ent. Reference No.** RN109240887  
**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	Costs Saved	EB Amount
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### 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)	\$25	23-May-2019	23-May-2019	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to cease the discharge by shutting the pump off. Date required is the investigation end date. Final date is the date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25

**TOTAL**

\$0



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

## TCEQ

<b>DATES</b>	<b>Assigned</b>	25-Nov-2019	<b>Screening</b>	26-Nov-2019	<b>EPA Due</b>	
	<b>PCW</b>	2-Jun-2021				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Kenneth Patrick Whittlesey (PCW No. 3)				
<b>Reg. Ent. Ref. No.</b>	RN109240887				
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	58019	<b>No. of Violations</b>	1
<b>Docket No.</b>	2019-1036-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Water Quality	<b>Enf. Coordinator</b>	Harley Hobson
		<b>EC's Team</b>	Enforcement Team 3
<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>	\$2,500
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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>	2.0%	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$50
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<b>Notes</b>	Enhancement for one NOV with dissimilar violations.
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<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$413	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$3,150	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,550
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$2,550
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,550
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<b>DEFERRAL</b>	20.0%	Reduction	Adjustment	-\$510
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral offered for expedited settlement.
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<b>PAYABLE PENALTY</b>	\$2,040
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**Screening Date** 26-Nov-2019

**Docket No.** 2019-1036-MLM-E

**PCW**

**Respondent** Kenneth Patrick Whittlesey (PCW No. 3)

*Policy Revision 4 (April 2014)*

**Case ID No.** 58019

*PCW Revision March 26, 2014*

**Reg. Ent. Reference No.** RN109240887

**Media** Edwards Aquifer

**Enf. Coordinator** Harley Hobson

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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%
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 Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 2%

Screening Date 26-Nov-2019

Docket No. 2019-1036-MLM-E

PCW

Respondent Kenneth Patrick Whittlesey (PCW No. 3)

Policy Revision 4 (April 2014)

Case ID No. 58019

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109240887

Media Edwards Aquifer

Enf. Coordinator Harley Hobson

Violation Number 1

Rule Cite(s) Water Pollution Abatement Plan ("WPAP") No. 11001173, Standard Conditions No. 6, and 30 Tex. Admin. Code § 213.4(j) and (k)

Violation Description Failed to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the Respondent had cleared and disturbed 1.2 acres of land to store piles of whole and chipped wood pallets and process mulch without approval.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0.0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		X			5.0%
100% of the rule requirements were not met.					

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 60 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

Two monthly events are recommended, calculated from the date of investigation (September 27, 2019) to the date of screening (November 26, 2019).

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$413

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

## Economic Benefit Worksheet

**Respondent** Kenneth Patrick Whittlesey (PCW No. 3)  
**Case ID No.** 58019  
**Reg. Ent. Reference No.** RN109240887  
**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	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$3,150	27-Sep-2019	12-May-2022	2.62	\$413	n/a	\$413
Other (as needed)				0.00	\$0	n/a	\$0

#### Notes for DELAYED costs

Estimated Permit costs to submit and obtain approval for a modification of a previously approved WPAP. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

#### ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,150

**TOTAL**

\$413

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

Compliance History Report for CN601441538, RN109240887, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

**Customer, Respondent, or Owner/Operator:** CN601441538, WHITTLESEY, KENNETH PATRICK **Classification:** SATISFACTORY **Rating:** 4.80  
**Regulated Entity:** RN109240887, AUSTIN LANDSCAPE SUPPLIES WHOLESALE **Classification:** SATISFACTORY **Rating:** 6.00  
**Complexity Points:** 4 **Repeat Violator:** NO  
**CH Group:** 14 - Other  
**Location:** 5501 Ranch to Market Road 2243 in Georgetown, Williamson County, Texas  
**TCEQ Region:** REGION 11 - AUSTIN

## ID Number(s):

**MUNICIPAL SOLID WASTE PROCESSING REGISTRATION** 100475 **EDWARDS AQUIFER PERMIT** 11000271  
**EDWARDS AQUIFER PERMIT** 11000272 **EDWARDS AQUIFER PERMIT** 11001173  
**EDWARDS AQUIFER PERMIT** 11002409 **EDWARDS AQUIFER PERMIT** 11001174  
**STORMWATER PERMIT** TXR152640 **STORMWATER PERMIT** TXR05EH98

**Compliance History Period:** September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

**Date Compliance History Report Prepared:** June 01, 2021

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** June 01, 2016 to June 01, 2021

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

**Name:** Harley Hobson

**Phone:** (512) 239-1337

## 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

## 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.):

Item 1 January 13, 2017 (1387602)

### 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: 05/05/2021 (1704591)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 328, SubChapter A 328.5(f)(3)  
Description: Failure to maintain adequate financial assurance to cover all closure costs.

### 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  
RN109240887**

**§  
§  
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§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2019-1036-MLM-E**

**I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kenneth Patrick Whittlesey (the "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 together stipulate that:

1. The Respondent owns and operates a landscape supply business located at 5501 Ranch to Market Road 2243 in Georgetown, Williamson 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. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$13,301 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$317 of the penalty and \$2,659 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order.

The remaining amount of \$10,325 of the undeferred penalty shall be paid in 35 monthly payments of \$295 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If the Respondent fails to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of

the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. The Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). 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.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
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 Executive Director recognizes that the Respondent implemented the following corrective measures at the Site:
  - a. By May 23, 2019, the Respondent dewatered the temporary sediment basin and ceased the unauthorized discharge of stormwater.
  - b. By July 8, 2019, the Respondent submitted the deed recordation for the October 11, 2018 Water Pollution Abatement Plan ("WPAP") modification approval.
  - c. By October 8, 2019, the Respondent submitted the delinquent notification of intent to commence construction to the Austin Regional Office.
  - d. By January 25, 2021, the Respondent submitted a WPAP modification application for No. 11002409.

## **II. ALLEGATIONS**

1. During an investigation conducted on May 16, 2019 through May 23, 2019, an investigator documented that the Respondent:
  - a. Failed to dewater the temporary sediment basin via irrigation within 72 hours of a rain event, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and WPAP No. 11001173, Special Condition II. Specifically, the sediment basin was full of water even though more than 72 hours had elapsed since the prior rain event.

- b. Failed to submit proof of recordation of notice in the county deed records to the Austin Regional Office within 60 days of receiving written approval of a WPAP modification, in violation of 30 TEX. ADMIN. CODE § 213.4(g) and (k) and WPAP No. 11001173, Standard Condition No. 4. Specifically, the proof of deed recordation was not submitted for the October 11, 2018 WPAP modification approval.
  - c. Failed to provide written notification of intent to commence construction no later than 48 hours prior to commencement of the regulated activity, in violation of 30 TEX. ADMIN. CODE §§ 213.4(k) and 213.5(f)(1) and WPAP No. 11001173, Standard Condition No. 7. Specifically, a notice of intent to commence construction was not provided to the Austin Regional Office.
  - d. Failed to prevent a discharge of stormwater associated with industrial activities to any water in the state, in violation of 30 TEX. ADMIN. CODE § 213.4(k), TEX. WATER CODE § 26.121(a)(1), WPAP No. 11001173, Standard Condition No. 15, and Texas Pollutant Discharge Elimination System General Permit No. TXR05EH98, Part II, Section B No. 8. Specifically, the Respondent was dewatering the sediment basin without proper controls in place and was dewatering offsite rather than onto mulch piles located onsite as approved by the WPAP.
2. During an investigation conducted on September 27, 2019, an investigator documented that the Respondent failed to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone, in violation of WPAP No. 11001173, Standard Conditions No. 6, and 30 TEX. ADMIN. CODE § 213.4(j) and (k). Specifically, the Respondent had cleared and disturbed 1.2 acres of land to store piles of whole and chipped wood pallets and process mulch without approval.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this 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. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kenneth Patrick Whittlesey, Docket No. 2019-1036-MLM-E" to:



Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
- a. Respond completely and adequately to all TCEQ requests for additional information regarding the application for WPAP modification No. 11002409 within 30 days of such requests, or any other deadline specified in writing.
  - b. Within 30 days after the effective date of this Order:
    - i. Submit written certification that approval of WPAP modification No. 11002409 has been obtained and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, in accordance with Ordering Provision No. 2.c.
    - ii. In lieu of Ordering Provision No. 2.b.i: Restore the 1.2 acres of land used to store piles of whole and chipped wood pallets and process mulch to previous undisturbed conditions, and submit written certification including photographs, receipts, and/or other records to demonstrate compliance, in accordance with Ordering Provision No. 2.c.
  - c. The certification shall be signed by the Respondent and shall 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:

Edwards Aquifer Protection Program Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If the 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, the Respondent's failure to comply is not a violation of this 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.
6. 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 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This 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 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 Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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

12/01/2021

\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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

7/30/21  
\_\_\_\_\_  
Date

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

Owner  
\_\_\_\_\_  
Title

*If mailing address has changed, please check this box and provide the new address below:*