

Ashton Holdings, Inc.
 RN109765495
 Docket No. 2020-0218-WQ-E

Order Type:
 Agreed Order

Media:
 WQ

Small Business:
 Yes

Location(s) Where Violation(s) Occurred:
 northeast of Liberty School Road and Sandy Beach Road, Pelican Bay, Tarrant County (the “Site”)

Type of Operation:
 construction site

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third Parties:	None

Texas Register Publication Date: July 7, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$8,362

Total Paid to General Revenue: \$8,362

Total Due to General Revenue: \$0

Compliance History Classifications:

Person/CN - Unclassified
 Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): May 8, 2019

Complaint Information: Alleged that a city is failing to conduct clean up of debris and accumulated sediment from city storm drains and drainage ditches, causing flooding outside of the city during rain events and clogging the culverts and drainage ditches.

Date(s) of Investigation: June 7, 2019

Date(s) of NOV(s): N/A

Date(s) of NOE(s): January 17, 2020

Ashton Holdings, Inc.
RN109765495
Docket No. 2020-0218-WQ-E

Violation Information

Failed to maintain authorization to discharge stormwater associated with construction activities [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent ceased operational control of construction activities at the Site as of April 10, 2019.

Technical Requirements:

None

Litigation Information

Date Petition(s) Filed: January 21, 2021
Date Answer(s) Filed: February 20, 2021
SOAH Referral Date: January 31, 2022
Hearing Date(s):
 Preliminary hearing: March 24, 2022 (waived)
 Evidentiary hearing: November 3, 2022 (continued to February 7, 2023)
 February 7, 2023 (continued to May 17, 2023)
 May 17, 2023 (continued without a future setting)
 (Remanded)
Settlement Date: May 12, 2023

Contact Information

TCEQ Attorneys: David Keagle, Litigation Division, (512) 239-3400
Sheldon Wayne, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575
TCEQ Enforcement Coordinator: Harley Hobson, Enforcement Division, (512) 239-1337
TCEQ Regional Contact: Brent Candler, Dallas/Ft Worth Regional Office, (817) 588-5800
Respondent Contact: Adlai Pennington, President, Ashton Holdings, Inc., 1375 Gilman Road, Fort Worth, Texas 76140
Respondent's Attorney: Mark McPherson, McPherson Law Firm, 100 Crescent Ct. Ste. 700, Dallas, TX 75201, mark@texasenvironmentallaw.com



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	31-Jan-2020			
	PCW	24-Apr-2020	Screening	31-Jan-2020	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Ashton Holdings, Inc.				
Reg. Ent. Ref. No.	RN109765495				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	58902	No. of Violations	1
Docket No.	2020-0218-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Harley Hobson
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Adjustment	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment for compliance history.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$3,362	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$3,225	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	67.2% Adjustment	\$3,362
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 1.
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Final Penalty Amount	\$8,362
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,362
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DEFERRAL	0.0% Reduction Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$8,362
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Screening Date 31-Jan-2020

Docket No. 2020-0218-WQ-E

PCW

Respondent Ashton Holdings, Inc.

Policy Revision 4 (April 2014)

Case ID No. 58902

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN109765495

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 31-Jan-2020
Respondent Ashton Holdings, Inc.
Case ID No. 58902
Reg. Ent. Reference No. RN109765495
Media Water Quality
Enf. Coordinator Harley Hobson

Docket No. 2020-0218-WQ-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), Tex. Water Code § 26.121(a)(1), and 40 Code of Federal Regulations § 122.26(c)

Violation Description Failed to maintain authorization to discharge stormwater associated with construction activities. Specifically, authorization under Texas Pollutant Discharge Elimination System General Permit No. TXR15354C expired on March 5, 2018, and the Respondent continued to operate.

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 \$23,750

\$1,250

Violation Events

Number of Violation Events 4 311 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Four quarterly events are recommended from the June 3, 2018 permit application grace period end date to April 10, 2019 ownership change date.

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 \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,362

Violation Final Penalty Total \$8,362

This violation Final Assessed Penalty (adjusted for limits) \$8,362

Economic Benefit Worksheet

Respondent Ashton Holdings, Inc.
Case ID No. 58902
Reg. Ent. Reference No. RN109765495
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Permit Costs				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	\$3,000	3-Jun-2018	10-Apr-2019	0.85	\$127	\$3,000	\$3,127
Other (as needed)	\$225	3-Jun-2018	10-Apr-2019	0.85	\$10	\$225	\$235

Notes for AVOIDED costs

Estimated Other cost to update and implement a stormwater pollution prevention plan and post a site notice. The Date Required is the permit application grace period end date. The Final Date is the ownership change date.

Actual Other Cost to submit a notice of intent to renew the permit. The Date Required is the permit application grace period end date. The Final Date is the ownership change date.

Approx. Cost of Compliance

\$3,225

TOTAL

\$3,362

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Compliance History Report

Compliance History Report for CN605361054, RN109765495, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN605361054, Ashton Holdings Inc. **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN109765495, Lakeview Estates Phase 1 **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 1 **Repeat Violator:** NO

CH Group: 09 - Construction

Location: northeast of Liberty School Road and Sandy Beach Road in Pelican Bay, Tarrant County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: January 29, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 29, 2015 to January 29, 2020

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Steven Van Landingham **Phone:** (512) 239-5717

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.):

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
ASHTON HOLDINGS, INC.
RN109765495

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2020-0218-WQ-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ashton Holdings, Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Mark McPherson of the McPherson Law Firm, together stipulate that:

1. Respondent owned and operated a construction site located northeast of Liberty School Road and Sandy Beach Road in Pelican Bay, Tarrant 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 Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of eight thousand three hundred sixty-two dollars (\$8,362) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid eight thousand three hundred sixty-two dollars (\$8,362) of the penalty.
5. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, 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 Respondent has not complied with one or more of the terms or conditions contained 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 full compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that Respondent ceased operational control of construction activities at the Site as of April 10, 2019.

II. ALLEGATIONS

During an investigation conducted on June 7, 2019, an investigator documented that Respondent failed to maintain authorization to discharge stormwater associated with construction activities in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c). Specifically, authorization under Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR15354C expired on March 5, 2018, and Respondent continued to operate.

III. DENIALS

Respondent generally denies the Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and 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 actions or penalties for violations which are not raised here.
2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent.
4. This Order, issued by the Commission, shall not be admissible against 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 TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
5. 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.
6. 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

Erin E. Chamallop

7/17/23

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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

[Signature]

Signature - Adlai Pennington, President
Ashton Holdings, Inc.
1375 Gilman Road
Fort Worth, Texas 76140

Date

5/12/23

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