

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 56819
Carol Mahan and Tanner Mahan
RN104076856
Docket No. 2021-0287-WR-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

WR

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

San Saba River, Menard County (the "Site")

Type of Operation:

water rights

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: October 13, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$2,400

Total Paid to General Revenue: \$2,400

Total Due to General Revenue: \$0

Compliance History Classifications:

Person/CN - Unclassified (CN604376194); Unclassified (CN604123133)
Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: September 23, 2020

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

Date(s) of NOE(s): November 13, 2020

Violation Information

Failed to complete construction of a gate within the dam by no later than August 31, 2020 [TCEQ Agreed Order Docket No. 2018-1447-WR-E, Ordering Provision No. 2.a.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Completed construction of a gate within the dam as of July 21, 2022.

Technical Requirements:

None

Litigation Information

Date Petition(s) Filed: June 27, 2022
Date(s) of Service: June 30, 2022
Date Answer(s) Filed: July 20, 2022
SOAH Referral Date: October 11, 2022
Settlement Date: September 14, 2023

Contact Information

TCEQ Attorneys: Clayton Smith, Litigation Division, (512) 239-3400
Eli Martinez, 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: Cain Cline, San Angelo Regional Office, (325) 659-6705
Respondent Contact: Carol and Tanner Mahan, P.O. Box 888, Menard, Texas 76859-0888
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	2-Feb-2021	Screening	23-Feb-2021	EPA Due	
	PCW	11-Oct-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Carol Mahan and Tanner Mahan
Reg. Ent. Ref. No.	RN104076856
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	56819	No. of Violations	1
Docket No.	2021-0287-WR-E	Order Type	Findings
Media Program(s)	Water Rights	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Harley Hobson
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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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	20.0%	Adjustment	Subtotals 2, 3, & 7	\$400
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Notes: Enhancement for one order containing a denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$282
 Estimated Cost of Compliance: \$2,000
 *Capped at the Total EB \$ Amount

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

Notes:

Final Penalty Amount	\$2,400
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,400
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$2,400
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Screening Date 23-Feb-2021

Docket No. 2021-0287-WR-E

PCW

Respondent Carol Mahan and Tanner Mahan

Policy Revision 4 (April 2014)

Case ID No. 56819

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104076856

Media Water Rights

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>)	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%
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)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one order containing a 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 23-Feb-2021

Docket No. 2021-0287-WR-E

PCW

Respondent Carol Mahan and Tanner Mahan

Policy Revision 4 (April 2014)

Case ID No. 56819

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104076856

Media Water Rights

Enf. Coordinator Harley Hobson

Violation Number 1

Rule Cite(s) Docket No. 2018-1447-WR-E Ordering Provisions No. 2.a

Violation Description Failed to complete construction of a gate within the dam by no later than August 31, 2020.

Base Penalty \$5,000

>> 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 Ordering Provision was not met.					

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 8 Number of violation days 689

daily		Violation Base Penalty \$2,000
weekly		
monthly		
quarterly	x	
semiannual		
annual		
single event		

Eight quarterly events are recommended from the August 31, 2020 ordering provision due date to the July 21, 2022 compliance 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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$282 Violation Final Penalty Total \$2,400

This violation Final Assessed Penalty (adjusted for limits) \$2,400

Economic Benefit Worksheet

Respondent Carol Mahan and Tanner Mahan
Case ID No. 56819
Reg. Ent. Reference No. RN104076856
Media Water Rights
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	\$2,000	14-Jul-2020	21-Jul-2022	2.02	\$13	\$269	\$282
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

Estimated cost to construct a gate within the dam. The Date Required is the effective date of Docket No. 2018-1447-WR-E, and the 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

\$2,000

TOTAL

\$282

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 CN604376194, RN104076856, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN604376194, MAHAN, CAROL **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN104076856, ADJ 1841 **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: The San Saba River in Menard County, Texas

TCEQ Region: REGION 08 - SAN ANGELO

ID Number(s):

WATER QUALITY NON PERMITTED ID NUMBER R08104076856 **WATER RIGHTS WR POINT** 61401841302

WATER RIGHTS ID NUMBER ADJ 1841 **WATER RIGHTS WR POINT** 61401841001

WATER RIGHTS WR POINT 61401841002 **WATER RIGHTS WR POINT** 61401841301

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

Date Compliance History Report Prepared: February 23, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 23, 2016 to February 23, 2021

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? YES
- 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:

- 1 Effective Date: 07/14/2020 ADMINORDER 2018-1447-WR-E (1660 Order-Agreed Order With Denial)
- Classification: Moderate
- Citation: 30 TAC Chapter 297, SubChapter E 297.51
- Rqmt Prov: ADJ 14-1841A PERMIT
- Description: Failed to commence or complete construction within the time specified in the permit. Specifically, Respondents failed to complete construction of a gate within the dam within six months of issuance of Certificate of Adjudication No. 14-1841A, or by June 13, 2017.

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

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Compliance History Report

Compliance History Report for CN604123133, RN104076856, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN604123133, MAHAN, TANNER **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN104076856, ADJ 1841 **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: The San Saba River in Menard County, Texas

TCEQ Region: REGION 08 - SAN ANGELO

ID Number(s):

WATER QUALITY NON PERMITTED ID NUMBER R08104076856 **WATER RIGHTS WR POINT** 61401841302

WATER RIGHTS ID NUMBER ADJ 1841 **WATER RIGHTS WR POINT** 61401841001

WATER RIGHTS WR POINT 61401841002 **WATER RIGHTS WR POINT** 61401841301

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

Date Compliance History Report Prepared: February 23, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 23, 2016 to February 23, 2021

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? YES
- 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:

- 1 Effective Date: 07/14/2020 ADMINORDER 2018-1447-WR-E (1660 Order-Agreed Order With Denial)
- Classification: Moderate
- Citation: 30 TAC Chapter 297, SubChapter E 297.51
- Rqmt Prov: ADJ 14-1841A PERMIT
- Description: Failed to commence or complete construction within the time specified in the permit. Specifically, Respondents failed to complete construction of a gate within the dam within six months of issuance of Certificate of Adjudication No. 14-1841A, or by June 13, 2017.

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
CAROL MAHAN AND TANNER MAHAN;
RN104076856**

**§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2021-0287-WR-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Carol Mahan and Tanner Mahan ("Respondents") under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents presented this Order to the Commission.

Respondents understand that they have certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, to request an evidentiary hearing, receive notice of an evidentiary hearing, and a right to appeal. By entering into this Order, Respondents agree to waive all notice and procedural rights that might otherwise be authorized or required in this action.

It is further understood and agreed that 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. The duties and responsibilities imposed by this Order are binding upon Respondents.

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

FINDINGS OF FACT

1. Respondents own real property and appurtenant water rights in the San Saba River in Menard County, Texas, as described in Certificate of Adjudication No. 14-1841A (the "Site"). The Site adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(52).
2. During an investigation conducted on September 23, 2020, an investigator documented that Respondents failed to complete construction of a gate within the dam by no later than August 31, 2020.
3. The Executive Director recognizes that Respondents completed construction of a gate within the dam as of July 21, 2022.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 11 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondents failed to complete construction of a gate within the dam by no later than August 31, 2020, in violation of TCEQ Agreed Order Docket No. 2018-1447-WR-E, Ordering Provision No. 2.a.
3. Pursuant to TEX. WATER CODE § 11.0842(a), TCEQ has the authority to assess an administrative penalty against Respondents for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of two thousand four hundred dollars (\$2,400.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 11.0842(c). Respondents paid two thousand four hundred dollars (\$2,400.00) of the penalty.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondents' compliance with all requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. 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 Respondents.
4. This Order, issued by the Commission, shall not be admissible against Respondents in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("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 TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
5. 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.
6. 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.
7. 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.
8. 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 (1 of 2)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Erin E. Chanallop

For the Executive Director

10/30/23

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.

Carol Mahan

Signature - Carol Mahan
P.O. Box 888
Menard, Texas 76859-0888

9-14-2023

Date

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

SIGNATURE PAGE (2 of 2)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

10/30/23
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.

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- 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 - Tanner Mahan

P.O. Box 888
Menard, Texas 76859-0888

9-14-2023

Date

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