

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 60428
COMAL IRON & METAL, INC.
RN103219572
Docket No. 2021-0295-EAQ-E

Order Type:
Agreed Order

Media:
EAQ

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
1431 Farm-to-Market Road 306, New Braunfels, Comal County

Type of Operation:
scrap metal recycling facility

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: May 26, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$27,000

Total Paid to General Revenue: \$750

Total Due to General Revenue: \$26,250

Payment Plan: 35 payments of \$750 each

Compliance History Classifications:

Person/CN - Unsatisfactory

Site/RN - Unsatisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: November 5, 2020

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

Date(s) of NOE(s): February 25, 2021

Violation Information

Failed to obtain approval of an Edwards Aquifer Protection Plan prior to commencing the construction of a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately cease any regulated activity at the Facility until such time that an Edwards Aquifer Protection Plan has been reviewed and approved by the TCEQ's San Antonio Regional Office.
2. In lieu of Technical Requirement No. 1, within 15 days submit an administratively complete Edwards Aquifer Water Pollution Abatement Plan ("WPAP") application and associated application fees. Respond completely and adequately to all TCEQ requests for additional information within 15 days of such requests, or by any other deadline specified in writing.
3. Within 120 days, either:
 - a. Cease all operations at the Facility; or
 - b. Submit written certification that approval of the Edwards Aquifer WPAP has been obtained.

Litigation Information

Date Petition(s) Filed: September 15, 2022, September 26, 2022
Date(s) of Service: unclaimed; October 11, 2022
Date Answer(s) Filed: October 24, 2022
SOAH Referral Date: November 28, 2022
Hearing Date(s):
Preliminary hearing: February 9, 2023 (waived)
Evidentiary hearing: May 18, 2023 (scheduled; remanded)
Settlement Date: April 24, 2023

Contact Information

TCEQ Attorneys: Jennifer Peltier, 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: Laura Draper, Enforcement Division, (254) 761-3012
TCEQ Regional Contact: Joy Thurston-Cook, San Antonio Regional Office, (210) 490-3096
Respondent Contact: Johnnie Rodriguez, Vice-President, COMAL IRON & METAL, INC., 1431 Farm-to-Market Road 306, New Braunfels, Texas 78132
Respondent's Attorney: Robert Wm. Best, Whiteford, Taylor & Preston, LLP, 249 Central Park Avenue, Suite 300, Virginia Beach, Virginia 23462



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	22-Feb-2021	Screening	25-Feb-2021	EPA Due	
	PCW	9-May-2023				

RESPONDENT/FACILITY INFORMATION

Respondent	COMAL IRON & METAL, INC.				
Reg. Ent. Ref. No.	RN103219572				
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	60428	No. of Violations	1
Docket No.	2021-0295-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Laura Draper
		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** **\$20,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **35.0%** Adjustment **Subtotals 2, 3, & 7** **\$7,000**

Notes: Enhancement for one Order that does not contain a denial of liability and Unsatisfactory Performer classification.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$228**
 Estimated Cost of Compliance **\$3,150**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$27,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$27,000**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$27,000**

DEFERRAL **0.0%** Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$27,000**

Screening Date 25-Feb-2021

Docket No. 2021-0295-EAQ-E

PCW

Respondent COMAL IRON & METAL, INC.

Policy Revision 4 (April 2014)

Case ID No. 60428

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN103219572

Media Edwards Aquifer

Enf. Coordinator Laura Draper

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	1	25%
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) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one Order that does not contain a denial of liability and Unsatisfactory Performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 35%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 35%

Screening Date 25-Feb-2021
Respondent COMAL IRON & METAL, INC.
Case ID No. 60428
Reg. Ent. Reference No. RN103219572
Media Edwards Aquifer
Enf. Coordinator Laura Draper

Docket No. 2021-0295-EAQ-E

PCW

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

Violation Number

Rule Cite(s)

Violation Description
 Failed to obtain approval of an Edwards Aquifer Protection Plan prior to commencing the construction of a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, Respondent commenced construction of a regulated activities including the construction of and the operation of a scrap metal recycling facility without obtaining approval of an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") or Exception Request.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	
<input type="text"/>	<input type="text" value="100% of the rule requirements were not met."/>				

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input checked="" type="text" value="x"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	<input type="text"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

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 CN600530208, RN103219572, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN600530208, COMAL IRON & METAL, INC. **Classification:** UNSATISFACTORY **Rating:** 93.33

Regulated Entity: RN103219572, COMAL IRON AND METAL **Classification:** UNSATISFACTORY **Rating:** 93.33

Complexity Points: 2 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 1431 Farm-to-Market 306 in New Braunfels, Comal County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

WATER QUALITY NON PERMITTED ID NUMBER R13103219572 **STORMWATER PERMIT** TXR05DJ84

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

Date Compliance History Report Prepared: February 25, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 25, 2016 to February 25, 2021

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

Name: Katelyn Tubbs

Phone: (512) 239-2512

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: 05/23/2019 ADMINORDER 2018-0187-MLM-E (Findings Order-Agreed Order Without Denial)
 - Classification: Moderate
 - Citation: 30 TAC Chapter 335, SubChapter H 335.261(b)(16)(F)(i)
40 CFR Chapter 273, SubChapter I, PT 273, SubPT B 273.14(a)
 - Description: Failed to properly label universal waste batteries, or containers used to store used batteries with the words "Universal Waste-Batteries or Used Batteries"
 - Classification: Moderate
 - Citation: 30 TAC Chapter 324, SubChapter A 324.6
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)(1)
 - Description: Failed to mark or clearly label used oil storage containers with the words "Used Oil,"
 - Classification: Major
 - Rqmt Prov: Provision Nos. 2.a. & 2.b. ORDER
 - Description: Failed to comply with the Ordering Provisions of Agreed Order Docket No. 2014-1351-MLM-E
 - Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 - Description: Caused, suffered, allowed, or permitted the unauthorized disposal of municipal solid waste ("MSW")

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	May 11, 2020	(1611554)
Item 2	May 22, 2020	(1646371)

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
COMAL IRON & METAL, INC.;
RN103219572

§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2021-0295-EAQ-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 COMAL IRON & METAL, 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 Robert Wm. Best of the law firm Whiteford, Taylor & Preston, LLP together stipulate that:

1. Respondent operates a scrap metal recycling facility located at 1431 Farm-to-Market Road 306 in New Braunfels, Comal County, Texas (the "Facility"). The Facility 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 twenty-seven thousand dollars (\$27,000.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid seven hundred fifty dollars (\$750.00) of the penalty. The remaining amount of twenty-six thousand two hundred fifty dollars (\$26,250.00) shall be paid in thirty-five (35) monthly payments of seven hundred fifty dollars (\$750.00) 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 Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order.
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.

II. ALLEGATIONS

During an investigation initiated on November 5, 2020, an investigator documented that Respondent failed to obtain approval of an Edwards Aquifer Protection Plan prior to commencing the construction of a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1). Specifically, Respondent commenced construction of a regulated activities including the construction of and the operation of a scrap metal recycling facility without obtaining approval of an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") or Exception Request.

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. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: COMAL IRON & METAL, INC., Docket No. 2021-0295-EAQ-E" to:

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

2. Respondent shall undertake the following technical requirements:
 - a. Immediately cease any regulated activity at the Facility until such time that an Edwards Aquifer Protection Plan has been reviewed and approved by the TCEQ's San Antonio Regional Office.
 - b. In lieu of Ordering Provision 2.a., within 15 days after the effective date of this Order, submit an administratively complete Edwards Aquifer WPAP application and associated application fees, for review and approval to:

Edwards Aquifer Protection Program
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

Respond completely and adequately to all TCEQ requests for additional information within 15 days of such requests, or by any other deadline specified in writing.

- c. Within 120 days after the effective date of this Order, Respondent shall either:
- i. Cease all operations at the Facility; or
 - ii. Submit written certification that approval of the Edwards Aquifer WPAP has been obtained. The certification shall be signed by 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 fine and imprisonment for knowing violations.”

Respondent shall submit the written certification and detailed supporting documentation necessary to demonstrate compliance with these Corrective Action Ordering Provisions to:

Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and:

Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Rd
San Antonio TX 78233-4480

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 Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Enforcement Division at the address listed above.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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.

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



For the Executive Director

6/19/23

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.



Signature - Johnnie Rodriguez, Jr., Vice President
COMAL IRON & METAL, INC.
1431 Farm to Market 306
New Braunfels, Texas 78132

4/24/23

Date

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