

Executive Summary – Enforcement Matter – Case No. 60675
Forestar (USA) Real Estate Group Inc.
RN110914801
Docket No. 2021-0552-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Fairwater Phase II C&G, located approximately 800 feet southeast of the intersection of Hilltop Ranch Court and Hilltop Ranch Drive, Montgomery, Montgomery County

Type of Operation:

Real estate development Phase II project

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: January 14, 2022

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,125

Amount Deferred for Expedited Settlement: \$2,625

Total Paid to General Revenue: \$10,500

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): February 3, 2021

Complaint Information: Alleged there was a dust nuisance from the Respondent's property.

Date(s) of Investigation: February 5, 2021

Date(s) of NOE(s): April 12, 2021

Executive Summary – Enforcement Matter – Case No. 60675
Forestar (USA) Real Estate Group Inc.
RN110914801
Docket No. 2021-0552-AIR-E

Violation Information

Failed to prevent nuisance dust conditions. Specifically, Citizen-Collected Evidence in the form of videos and pictures taken on February 3, 2021 and February 4, 2021 demonstrated thick clouds of dust emissions from the Fairwater Subdivision Phase II site traveling off-site and impacting off-site receptors, resulting in the confirmation of nuisance dust conditions [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, implement measures and/or procedures designed to minimize dust emissions from leaving the Site and causing nuisance dust conditions at off-site receptors; and
- b. Within 45 days, submit written certification to demonstrate compliance with a.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Johnnie Wu, Enforcement Division, Enforcement Team 5, MC 219, (512) 239-2524; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Doug Arends, Director of Environmental Compliance and Safety, Forestar (USA) Real Estate Group Inc., 1661 East Camelback Road, Suite 330, Phoenix, Arizona 85016

Justine C. Klinke, Vice President, Forestar (USA) Real Estate Group Inc., 3355 West Alabama Street, Houston, Texas 77098

Respondent's Attorney: N/A

AIR CP_110914801_CP FCONF_20210205_Investigation_1702151_
Texas Commission on Environmental Quality
Investigation Report

The TCEQ is committed to accessibility. If you need assistance in accessing this document, please contact oce@tceq.texas.gov

Customer: Forestar Real Estate Group Inc.
Customer Number: CN603792284

Regulated Entity Name: FAIRWATER PHASE II C&G

Regulated Entity Number: RN110914801

Investigation # 1702151	Incident Numbers 349964
Investigator: YAYMA MARTINEZ	Site Classification
Conducted: 02/05/2021 -- 02/05/2021	SIC Code: 1629 SIC Code: 6552
Program(s): AIR QUALITY NON PERMITTED	
Investigation Type: Compliance Investigation	Location: APPROX. 800 FEET SOUTHEAST OF THE INTERSECTION OF HILLTOP RANCH CRT. & HILLTOP RANCH DR.
Additional ID(s):	

Address: , , ,	Local Unit: REGION 12 - HOUSTON
	Activity Type(s): AIRCOMPL - AIR CMPL - AIR COMPLAINT INV

Principal(s):

Role	Name
RESPONDENT	FORESTAR REAL ESTATE GROUP INC

Contact(s):

Role	Title	Name	Phone
REGULATED ENTITY MAIL CONTACT	DEVELOPMENT DIRECTOR	MR THOMAS SIKORA	Work (713) 457-1698 Cell (346) 234-0561
REGULATED ENTITY CONTACT	DEVELOPMENT MANAGER	Grant M Boshart	Cell (903) 217-8656 Work (832) 823-2244

Other Staff Member(s):

Role	Name
Supervisor	LETASHA MILLER
QA Reviewer	LETASHA MILLER

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
AIR COMPLAINT INVESTIGATION	sitewide

Investigation Comments:

INTRODUCTION

Introduction

On February 3, 2021, at approximately 4:53 pm, the Texas Commission on Environmental Quality (TCEQ) Houston Region Office, received incident no. 349964 via the Air Section's complaint phone line. The complainant alleged that work cars and trucks from a neighboring residential development were kicking up dust all day, creating large amounts of dust on the complainant's yard and outdoor furniture. Additionally, a family member suffers from respiratory ailments and the dust could potentially make the situation worse.

A second complaint was received on February 4, 2021, at approximately 1:31 pm, via the Air Section's complaint phone line. The complainant alleged dust nuisance was being created by builders who were excavating and not using water to control dust emissions. The complainant alleged this activity was causing large dust clouds, reducing visibility to about 0.5 miles within the Hilltop Ranch Subdivision.

A third complaint was received on February 5, 2021, at approximately 3:06 pm, via the Air Section's complaint phone line. The complainant alleged of being affected by dust created at a nearby property where a new subdivision is being constructed. The complainant stated of experiencing a dust nuisance on February 3, 2021 and February 4, 2021. The complainant added that the dust aggravates allergies, making it difficult to breathe during times of dust exposure in the area. Additionally, the complainant alleged that, on one occasion, a truck was dispersing white powder throughout the construction area to create roads.

All complainants alleged the developers of the Fairwater Subdivision to be the source of the dust. And, the first and second complainants mentioned having this same issue in May 2020.

On February 3, 2021, meteorological conditions obtained from the TCEQ's Continuous Ambient Monitoring Station (CAMS) 78: Conroe Relocated C78/A321 were: temperature was about 64 degrees Fahrenheit (F) with a south/southeast wind at about 11 miles per hour (mph) and gusting up to 20 mph.

On February 4, 2021, meteorological conditions obtained from the TCEQ's Continuous Ambient Monitoring Station (CAMS) 78: Conroe Relocated C78/A321 were: temperature was about 74 degrees F with a south/southwest wind at about 15 mph, and gusting up to 30 mph.

Complaint incident no. 349964, was assigned to Ms. Yayma Martinez, TCEQ Air Investigator, on February 4, 2021. The investigator contacted the first complainant on February 4, 2021, at approximately 3:14 pm to obtain additional information. The complainant said that the dust cloud was so heavy on February 3, 2021, that opacity was close to 100% in the neighborhood. The complainant stated having previously been a certified Method 9 reader. According to the complainant, the construction activities had been somewhat suspended after the NOV in the summer; however, they started again towards the beginning of the year (2021). Due to everything being wet and humid, there had been no dust issues. The last week of January and first week of February were increasingly dry and that's when the dust started traveling across property lines, towards the complainant's house. The complainant was unhappy with TCEQ's previous NOV since they felt that no real action was taken by the alleged source. The complainant stated that there were videos of the thick clouds of dust traveling from the development onto their property. The investigator discussed the process to submit Citizen Collected Evidence (CCE), such as pictures and videos, to the TCEQ for possible inclusion in the investigation. The investigator followed up with emails on February 4, 9, and 23, 2021.

On February 4, 2021, at approximately 3:26 pm, the investigator contacted the second complainant to obtain additional information. The complainant stated that there are big scraper trucks moving and flattening dirt at a residential development nearby. The movement of dirt is causing dust clouds onto the complainant's property and into the neighborhood, reducing visibility on the roads. The dust had been getting worse all week, as environmental conditions were dry and somewhat windy. The complainant stated that it was especially bad when the wind blew from a generally southern direction at 10 mph and above. Additionally, a member of the complainant's household has allergies and the dust is making their allergies worse. This complainant also stated that there were videos of the impacts of the dust on their property. Ms. Martinez discussed the CCE process and followed up with emails on February 5 and 23, 2021.

On February 4, 2021, at approximately 4:53 pm and 5:00 pm, the investigator informed the first and the second complainants (respectively) of the scheduled on-site investigation for the morning of February 5, 2021.

The investigator did not contact the third complainant prior to the investigation because that complainant was filed after the investigator went on-site.

Investigation Narrative

Friday, February 5, 2021

At approximately 9:40 am, Ms. Martinez arrived in the area of FM 2854 and Hilltop Ranch Drive. The weather conditions, reported at TCEQ's CAMS 78, were as follows: 44 degrees F with northeast winds at about 4 mph and gusting at about 13 mph. It had recently rained and there was still a bit of an intermittent drizzle.

The alleged source is a new residential development, Fairwater Subdivision, located on Farm-to-Market (FM) Road 2854, about 1.6 mi. south of Texas 105 (from Montgomery, TX). The developer is Forestar Group, Inc. and DR Horton and CastleRock Communities are the home builders.

The investigator drove north on FM 2854 and stopped on the side of the road just south of Fairwater Parkway Place. There was a large area of cleared land with a few brand-new houses, some houses under construction, and many vacant residential lots. Towards the north property boundary, the investigator observed what appeared to be a hill and some heavy-duty vehicles moving and compacting the dirt. There were no dust emissions observed at the time.

The investigator drove north to Hilltop Ranch Drive, and east along the length of the road. No dust emissions were observed. See Attachment #1 for Area Maps.

Following CDC and TCEQ safety and social distancing guidelines for investigations conducted during the COVID-19 pandemic, the investigator met with one of the complainants to survey the property for evidence of dust. The investigator observed dust accumulated on outdoor furniture and the area was muddy due to the recent rain. No dust emissions were observed coming onto the complainant's property.

The complainant stated that the previous few days, dust was so bad that the patio furniture of all the houses that back up to the property line was full of dust. The investigator took pictures of patio furniture covered in dust, including cushions which, when patted, billowed a cloud of dust. The investigator observed significant dust build up on some of the windowsills and vegetation.

At approximately 10:00 am, another resident approached the investigator with a complaint similar to the two already filed. The resident stated that there had been a large amount of dust blowing onto the outdoor furniture and garden. The resident alleged that some of the dust was white and looked like something one would put down as a stabilizer before building a road. Ms. Martinez provided the resident the Air Section's complaint line should they experience additional issues.

The investigator left the area at approximately 10:25 am.

The investigator drove to the southernmost entrance of the Fairwater project at approximately 10:30am. The main entrance, Fairwater Parkway Place, is one of the main paved roads of the development. There were two model homes from different builders in a small cul-de-sac immediately to the right of the main entrance. The investigator met with the sales representative for DR Horton. The investigator explained the purpose of the investigation and asked if he was aware of any dust issues. He said yes, there were dust issues in the summer of 2020 and that the developer, Forestar, had increased watering frequency. He said he did see some dust recently; however, there was no dust currently. He gave the investigator the name of Mr. Thomas Sikora as the Project Manager.

At approximately 10:55 am, the investigator drove east on Fairwater Parkway Place. A front loader was observed at the northern property boundary moving dirt around. The investigator parked on Fairwater Parkway Place, near the intersection with Courteous Creek Drive and observed the heavy equipment working the dirt. The tractor with the two pull scrapers continued to go back and forth across the area, in long west to east patterns. Due to the recent rain, the dirt was very wet, and no dust was observed.

Around 11:20 am, the investigator noticed a water truck putting water down in the areas being worked over by the front-end loader and pull scrapers. The ground was observed to be so saturated that the water truck appeared to

have difficulty navigating the terrain. Ms. Martinez drove west on Fairwater Parkway Place, turning right (north) on Clear Ridge Lane, and parking at the dead end. The heavy equipment continued moving dirt around. Dust emissions were not observed.

The project manager was not onsite; therefore, the investigator was not able to talk to him directly. Ms. Martinez left the area at approximately 11:35 am.

See Attachment #2, Photographs of Land Development

Facility Authorization Narrative

Forestar Group, Inc. does not conduct activity that is required to be permitted under an air permit or air authorization.

Exit Interview

On February 5, 2021, upon returning to the office, the investigator contacted Mr. Thomas Sikora to discuss the allegations of complaints and observations made during the site visit. Ms. Martinez left a voicemail.

On Monday, February 8, 2021, Mr. Sikora returned the phone call. Ms. Martinez explained the nature of the complaints and the observations made off-site and on-site. Mr. Sikora stated that they were utilizing the watering trucks as needed. Additionally, when putting fly ash down as a road stabilizer, if conditions are windy, they send a water truck in front of the fly ash truck. Ms. Martinez requested watering logs for the period from January 31, 2021 through February 6, 2021.

On February 22, 2021, Ms. Martinez had not yet received the watering logs. She emailed Mr. Sikora with a reminder of the record requested and a due date of close of business on February 26, 2021. On February 26, 2021, Mr. Sikora provided watering records for the following dates in February 2021: 4, 5, 8, and 10. The logs contained total daily water usage in gallons. Watering logs for January 31, 2021 to February 3, 2021, were not provided. Mr. Sikora requested additional time to provide those records. Ms. Martinez agreed to a one-week extension, with the remaining records due no later than March 5, 2021. On an email dated March 1, 2021, Mr. Sikora stated that there were no logs for the remaining days because watering was not needed during those days. See Attachment #5 Watering Logs (January 31, 2021 - February 10, 2021) and Email Communication.

On March 4, 2021, Ms. Martinez received emails from one of the complainants with pictures and videos. The images showed a cloud of dust crossing property lines into the complainant's property. See Attachment #3, Citizen Collected Evidence, for photos and screenshots of the videos. On March 29, 2021, the investigator received an electronic copy of a signed and notarized affidavit, certifying the accuracy of the complainant's photos and videos. The hard copy was received via mail on March 31, 2021. See Confidential Attachment #4, Citizen Collected Evidence Affidavit. The activities captured by the complainant in the CCE and accompanying notarized affidavit documented nuisance dust conditions created by the development of the Fairwater Subdivision. For more information, see VTN 773701 (Category B18.g.1 violation).

On April 7, 2021, the investigator conducted an exit interview with Mr. Sikora via voicemail. An Exit Interview Form was completed by the investigator and emailed to Mr. Sikora on April 7, 2021. The Exit Interview Form is provided in Attachment #6.

In addition, two of the complainants were contacted by phone with the results of the investigation on April 7, 2021. The third complainant was unreachable via phone due to a disconnected phone number.

GENERAL FACILITY AND PROCESS INFORMATION

Process Description

Forestar Group, Inc. is a real estate development company operating in Greater Houston.

BACKGROUND

Agreed Orders, Court Orders, and Other Compliance Agreements

Based on review of CCEDS and the regional office files, there were no agreed orders, court orders, or other compliance agreements for Forestar Group, Inc.

Prior Enforcement Issues

Based on a review of CCEDS and the regional office files, violations were issued by the TCEQ to Forestar Group, Inc. during the past five years. There are repeat violations.

Investigation no. 1646621 for complaint incident nos. 337347 and 335227 was conducted June 8, 2020 to June 17, 2020. A Notice of Violation (NOV) was issued to Forestar Real Estate Group, Inc. on June 19, 2020 for a dust related nuisance violation (violation tracking number [VTN] 751891, Category B18.g.1). VTN 773701, Category B18.g.1 violation is being issued in this investigation for failure to prevent a dust nuisance. Since the same violation has been cited in consecutive investigations, VTN 773701 is being referred to the Enforcement Division.

Complaints

Based on a review of CCEDS during the past five years, there were dust complaints received and investigated by the Region 12 Office (CCEDS investigation #1646621) as listed below.

- CCEDS Incident 335227 was received May 8, 2020 at 2:16 pm, alleging dust nuisance from Forestar's Fairwater development.
- CCEDS Incident 337347 was received June 16, 2020, at approximately 3:20 pm, also alleging dust nuisance from Forestar's Fairwater development.

The complaints were confirmed, and a violation was issued for dust related nuisance.

ADDITIONAL INFORMATION

Conclusions, Recommendations, and Current Enforcement Actions

One violation was noted based upon conditions observed, information received, and records reviewed during this investigation. For more information, see the Summary of Investigation Findings below.

Additional Issues

No additional issues were noted during this investigation.

REPORT ATTACHMENTS

1. Area Maps
2. Photographs of Land Development
3. Citizen Collected Evidence
4. CONFIDENTIAL – Citizen Collected Evidence Affidavit
5. Watering Logs and Email Communication
6. Exit Interview Form

NOE Date: 4/12/2021

**OUTSTANDING ALLEGED VIOLATION(S)
ASSOCIATED TO A NOTICE OF ENFORCEMENT**

Track Number: 773701

Compliance Due Date: To Be Determined

Violation Start Date: 2/3/2021

**30 TAC Chapter 101.4
5C THSC Chapter 382.085(b)**

Alleged Violation:**Investigation: 1702151**

Comment Date: 04/08/2021

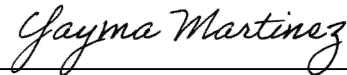
Failure to prevent a dust nuisance.

A complaint investigation was conducted on February 5, 2021, at the Fairwater Subdivision in Montgomery County to investigate allegations of a dust nuisance from residential development. Citizen Collected Evidence (CCE), in the form of video and pictures, taken on February 3 and 4, 2021 depicted thick clouds of dust traveling across property lines into the backyard of neighboring homes. The dust emissions originated from residential development activities conducted by The Forestar Real Estate group, Inc. Additionally, on February 5, 2021, during the on-site investigation, the investigator observed dust accumulated on the furniture, plants, and windowsills of homes. This constitutes a violation of 30 TAC 101.4, which states, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property."

This also constitutes the violation of the Texas Health and Safety Code 382.085(b).

Recommended Corrective Action: Submit a written description of corrective action taken and the required documentation demonstrating that compliance has been achieved for this outstanding alleged violation.

Signed



Environmental Investigator

Date 04/12/2021

Signed



Supervisor

Date 04/12/2021

Attachments: (in order of final report submittal)☒ Enforcement Action Request (EAR)☒ Letter to Facility (specify type) : NOE

Investigation Report

___ Sample Analysis Results

___ Manifests

___ Notice of Registration

☒ Maps, Plans, Sketches☒ Photographs☒ Correspondence from the facility

___ Other (specify) :

1. Area Maps

2. Photographs of Land Development

3. Citizen Collected Evidence

4. CONFIDENTIAL – Citizen Collected Evidence Affidavit

5. Watering Logs and Email Communication

6. Exit Interview Form



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	21-Apr-2021			
	PCW	27-Sep-2021	Screening	23-Apr-2021	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Forestar (USA) Real Estate Group Inc.				
Reg. Ent. Ref. No.	RN110914801				
Facility/Site Region	12-Houston		Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	60675	No. of Violations	1
Docket No.	2021-0552-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Johnnie Wu
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
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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.

Compliance History	5.0%	Adjustment	Subtotals 2, 3, & 7	\$625
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Notes	Enhancement for one NOV with same or similar violations.			
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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	\$713	<i>*Capped at the Total EB \$ Amount</i>
Estimated Cost of Compliance	\$10,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,125
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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	

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,125
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,625
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.			
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PAYABLE PENALTY	\$10,500
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Screening Date23-Apr-2021

RespondentForestar (USA) Real Estate Group Inc.

Case ID No.60675

Reg. Ent. Reference No.RN110914801

MediaAir

Enf. CoordinatorJohnnie Wu

Docket No.2021-0552-AIR-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

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>)	1	5%
	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)5%

>> 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 same or similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%5%

Screening Date	23-Apr-2021	Docket No.	2021-0552-AIR-E	PCW	
Respondent	Forestar (USA) Real Estate Group Inc.			<i>Policy Revision 5 (January 28, 2021)</i>	
Case ID No.	60675			<i>PCW Revision February 11, 2021</i>	
Reg. Ent. Reference No.	RN110914801				
Media	Air				
Enf. Coordinator	Johnnie Wu				
Violation Number	<input type="text" value="1"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)"/>				
Violation Description	<input type="text" value="Failed to prevent nuisance dust conditions. Specifically, Citizen-Collected Evidence in the form of videos and pictures taken on February 3, 2021 and February 4, 2021 demonstrated thick clouds of dust emissions from the Fairwater Subdivision Phase II site traveling off-site and impacting off-site receptors, resulting in the confirmation of nuisance dust conditions."/>				
Base Penalty				<input type="text" value="\$25,000"/>	
>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	Percent <input type="text" value="25.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0.0%"/>
Matrix Notes	<input type="text" value="Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation."/>				
Adjustment				<input type="text" value="\$18,750"/>	
					<input type="text" value="\$6,250"/>
Violation Events					
Number of Violation Events		<input type="text" value="2"/>	<input type="text" value="2"/>	Number of violation days	
	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$12,500"/>		
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input checked="" type="text" value="x"/>			
<input type="text" value="Two single events are recommended (one event for each documented nuisance condition)."/>					
Good Faith Efforts to Comply		<input type="text" value="0.0%"/>	Reduction <input type="text" value="\$0"/>		
		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"/>			
	Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
Violation Subtotal				<input type="text" value="\$12,500"/>	
Economic Benefit (EB) for this violation					
Statutory Limit Test					
Estimated EB Amount	<input type="text" value="\$708"/>	Violation Final Penalty Total	<input type="text" value="\$13,125"/>		
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$13,125"/>		

Economic Benefit Worksheet

Respondent Forestar (USA) Real Estate Group Inc.
Case ID No. 60675
Reg. Ent. Reference No. RN110914801
Media Air
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	\$5
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)	\$10,000	3-Feb-2021	1-Jul-2022	1.41	\$703	n/a	\$703
Notes for DELAYED costs	Estimated cost to implement measures and/or procedures designed to minimize dust emissions from leaving the Site and causing nuisance dust conditions at off-site receptors. The Date Required is the first date nuisance conditions were documented. 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	\$10,000	TOTAL	\$708
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Compliance History Report

Compliance History Report for CN603055799, RN110914801, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN603055799, Forestar (USA) Real Estate Group Inc. **Classification:** SATISFACTORY **Rating:** 16.00

Regulated Entity: RN110914801, FAIRWATER PHASE II C&G **Classification:** HIGH **Rating:** 0.00

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 09 - Construction

Location: Approximately 800 feet southeast of the Hilltop Ranch Court and Hilltop Ranch Drive intersection in Montgomery County, Texas

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):

STORMWATER PERMIT TXR1541AY

WATER QUALITY NON PERMITTED ID NUMBER
R12110914801

Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

Date Compliance History Report Prepared: April 23, 2021

Agency Decision Requiring Compliance History: Enforcement

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

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

Name: Johnnie Wu

Phone: (512) 239-2524

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.

- 1 Date: 06/19/2020 (1646621)
- Self Report? NO Classification: Minor
- Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THSC Chapter 382 382.085(b)
- Description: Failure to prevent dust related nuisance (Category B18g1)

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
FORESTAR (USA) REAL ESTATE
GROUP INC.
RN110914801**

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§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2021-0552-AIR-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 Forestar (USA) Real Estate Group Inc. (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns the property located approximately 800 feet southeast of the Hilltop Ranch Court and Hilltop Ranch Drive intersection in Montgomery County, Texas (the "Site"). The Site consists of or consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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. HEALTH & SAFETY CODE ch. 382 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 \$13,125 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$10,500 of the penalty and \$2,625 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, 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.

II. ALLEGATIONS

During an investigation conducted on February 5, 2021, an investigator documented that the Respondent failed to prevent nuisance dust conditions, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b). Specifically, Citizen-Collected Evidence in the form of videos and pictures taken on February 3, 2021 and February 4, 2021 demonstrated thick clouds of dust emissions from the Fairwater Subdivision Phase II site traveling off-site and impacting off-site receptors, resulting in the confirmation of nuisance dust conditions.

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: Forestar (USA) Real Estate Group Inc., Docket No. 2021-0552-AIR-E" to:

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

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, implement measures and/or procedures designed to minimize dust emissions from leaving the Site and causing nuisance dust conditions at off-site receptors.
 - b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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:

Air Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, Suite H
Houston, Texas 77023-1452

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



5/18/2022

For the Executive Director

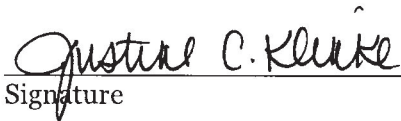
Date

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

December 1, 2021

Date

Justine C. Klink

Name (Printed or typed)

Vice President

Title

Authorized Representative of

Forestar (USA) Real Estate Group Inc.

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