

Executive Summary – Enforcement Matter – Case No. 61220
H. L. ZUMWALT CONSTRUCTION, INC.
RN105835375
Docket No. 2021-1120-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM - EAQ, WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

FM 1283 Ranch Quarry, located five miles west of Farm-to-Market Road 471 and State Highway 211 on the north side of Farm-to-Market Road 1283, Mico, Medina County

Type of Operation:

Aggregate production operation (“APO”)

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: April 14, 2023

Comments Received: No

Penalty Information

Total Penalty Assessed: \$18,675

Amount Deferred for Expedited Settlement: \$3,735

Total Paid to General Revenue: \$940

Total Due to General Revenue: \$14,000

Payment Plan: 14 payments of \$1,000 each

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: March 30, 2021 through June 29, 2021

Date(s) of NOE(s): July 29, 2021

Executive Summary – Enforcement Matter – Case No. 61220
H. L. ZUMWALT CONSTRUCTION, INC.
RN105835375
Docket No. 2021-1120-MLM-E

Violation Information

1. Failed to comply with the provisions of the approved Water Pollution Abatement Plan ("WPAP"). Specifically, the earthen berm system surrounding the plant area and quarry pit approved in the WPAP had been constructed with highly erodible pond fines removed during the process water recycling system, berm inspections were not being conducted on a weekly basis, and repairs were not being completed in a timely manner. Additionally, records demonstrating that the quarry operators had undergone annual karst feature recognition training were not being maintained [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer Protection Plan ("EAPP") ID No. 13-09110601, Standard Conditions No. 2].

2. Failed to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the project area had been expanded to 53 acres; regulated activity had commenced on nine acres of land identified as undeveloped; the base fueling pad had been expanded to 5.6 acres of impervious cover; office buildings, associated parking, and a haul road had been constructed; the Site's entrance was approximately 2,600 feet east of the approved location; and two on-site septic systems had been installed [30 TEX. ADMIN. CODE § 213.4(j) and EAPP ID No. 13-09110601, Standard Conditions No. 6].

3. Failed to implement all pollution prevention practices that are necessary to protect water quality in the receiving waters. Specifically, the Respondent constructed earthen berms around the process water ponds with highly erodible ponds fines and identified 19 separate noncompliant conditions with the berms concerning erosion and best management practices ("BMPs"). Additionally, the Employee Training Program and Employee Education had not been conducted [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR05Z243, Part III, Section A.4(a)(1), (c), (d)(1), and (f)].

4. Failed to conduct inspections of disturbed areas as specified in the permit. Specifically, the Respondent did not certify the non-stormwater discharge inspections for the permitted outfalls, conduct quarterly visual monitoring at the Site entrance, document the name of the inspector on the February 27, 2018 Routine Facility Inspection report, attach summary descriptions of proposed stormwater pollution prevention plan ("SWP3") changes to the Routine Facility Inspection checklists, prepare a signed/certified evaluation report for the Annual Comprehensive Site Compliance Evaluations, and update the SWP3 within 12 weeks of identifying the need for new or replacement BMPs [30 TEX. ADMIN. CODE § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Sections B.1(c), B.2(c), B.3, and B.5(c)].

5. Failed to identify and describe all activities and significant materials that may potentially be pollutant sources in the SWP3. Specifically, in the SWP3, the Respondent did not update the Inventory of Exposed Materials within 30 days following a significant change in material management practices that may affect exposure of materials to precipitation or runoff, describe the water recycling system or

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acknowledge previous issues with dry-weather flow, and identify exposed drums and other containers. Additionally, the Drainage Area Site Map did not provide details of stormwater flow at the Site entrance, the process wastewater treatment units, or the Sector P retention pond and the direction of flow from it; and did not identify swale structural control and maintenance control areas [30 TEX. ADMIN. CODE § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Section A.3(a), (b), and (d)].

6. Failed to establish a Team and identify Team members who will be responsible for developing and revising the SWP3. Specifically, the named Team members were not participating in the inspections, maintenance, monitoring, and training activities required by the MSGP [30 TEX. ADMIN. CODE § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Section A.1(a)(5) and A.2].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

i. Develop and implement procedures and conduct employee training to ensure that:

(1) Annual karst feature recognition training records are properly maintained;

(2) Berm inspections are conducted on a weekly basis;

(3) Berm repairs are completed in a timely manner;

(4) The Employee Training Program and Employee Education are properly conducted;

(5) Non-stormwater discharge inspections for the permitted outfalls are properly certified;

(6) Quarterly visual monitoring is conducted at the Site entrance;

(7) Summary descriptions of proposed SWP3 changes are attached to the Routine Facility Inspection checklist that have recommended BMP additions and modifications;

(8) Signed and certified evaluation reports for the Annual Comprehensive Site Compliance Evaluations are properly prepared;

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RN105835375
Docket No. 2021-1120-MLM-E

(9) The SWP3 is updated within 12 weeks of identifying the need for new or replacement BMPs; and

(10) Named Team members participate in the inspections, maintenance, monitoring, and training activities by the MSGP.

ii. Update the SWP3 to include:

(1) The name of the investigator on the February 27, 2018 Routine Facility Inspection report;

(2) The updated Inventory of Exposed Materials;

(3) The identified water recycling system, previous issues with dry weather flow, and exposed drums and other containers; and

(4) Details of stormwater flow at the Site entrance, the process wastewater treatment units, and the Sector P retention pond and the direction of flow from it; and the identified swale structural control and maintenance control areas.

iii. Submit a request for a modification of a previously approved WPAP.

b. Within 45 days, submit written certification of compliance with a.i.(1) through (10) and a.ii.(1) through (4).

c. Within 60 days, replace the berms constructed with pond fines with earthen berms composed of compacted soil, and install adequate BMPs to prevent noncompliance conditions.

d. Within 75 days, submit written certification of compliance with c.

e. Within 135 days, submit written certification that approval of the modification of the previously approved WPAP has been obtained.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Mark Gamble, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-2587; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Daryl Zumwalt, President, H. L. ZUMWALT CONSTRUCTION, INC., 12354 Farm-to-Market Road 1560 North, Helotes, Texas 78023

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	26-Jul-2021			
	PCW	31-Jan-2022	Screening	19-Aug-2021	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 1
Reg. Ent. Ref. No.	RN105835375
Facility/Site Region	13-San Antonio
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	61220	No. of Violations	3
Docket No.	2021-1120-MLM-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Caleb Olson
		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	\$12,000
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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	-10.0%	Adjustment	Subtotals 2, 3, & 7	-\$1,200
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Notes	Reduction for High Performer Classification.
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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	\$699	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$8,400	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,800
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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	
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Final Penalty Amount	\$10,800
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,800
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,160
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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	\$8,640
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Screening Date 19-Aug-2021

Docket No. 2021-1120-MLM-E

PCW

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 1

Policy Revision 5 (January 28, 2021)

Case ID No. 61220

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN105835375

Media Edwards Aquifer

Enf. Coordinator Caleb Olson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 19-Aug-2021 **Docket No.** 2021-1120-MLM-E **PCW**
Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 1 *Policy Revision 5 (January 28, 2021)*
Case ID No. 61220 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN105835375
Media Edwards Aquifer
Enf. Coordinator Caleb Olson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Protection Plan ("EAPP") ID No. 13-09110601, Standard Conditions No. 2

Violation Description
 Failed to comply with the provisions of the approved Water Pollution Abatement Plan ("WPAP"). Specifically, the earthen berm system surrounding the plant area and quarry pit approved in the WPAP had been constructed with highly erodible pond fines removed during the process water recycling system, berm inspections were not being conducted on a weekly basis, and repairs were not being completed in a timely manner.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				7.0%
	Potential			X	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes

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

Adjustment \$23,250

\$1,750

Violation Events

Number of Violation Events 1 142 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,750

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$1,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$460

Violation Final Penalty Total \$1,575

This violation Final Assessed Penalty (adjusted for limits) \$1,575

Economic Benefit Worksheet

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 1
Case ID No. 61220
Reg. Ent. Reference No. RN105835375
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction	\$5,000	30-Mar-2021	6-Jul-2022	1.27	\$21	\$423	\$444
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	30-Mar-2021	6-Jul-2022	1.27	\$16	n/a	\$16
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

Engineering/Construction delayed cost is the estimated amount to replace the berms surrounding the plant area and quarry pit with earthen berms composed of compacted soil. Date required is the investigation start date. Final date is the anticipated date of compliance.

Training/Sampling delayed cost is the estimated amount to develop and implement procedures and conduct employee training to ensure that annual karst feature recognition training records are properly maintained, that berm inspections are conducted on a weekly basis, and berm repairs are completed in a timely manner. Date required is the investigation start date. Final date is the anticipated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,250

TOTAL \$460

Screening Date 19-Aug-2021 **Docket No.** 2021-1120-MLM-E **PCW**
Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 1 *Policy Revision 5 (January 28, 2021)*
Case ID No. 61220 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN105835375
Media Edwards Aquifer
Enf. Coordinator Caleb Olson

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and EAPP ID No. 13-09110601, Standard Condition No. 2
Violation Description Failed to comply with the provisions of the approved WPAP. Specifically, records demonstrating that the quarry operators had undergone annual karst feature recognition training were not being maintained.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
				X	1.0%
	Less than 30% of the rule requirements were not met.				

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 1 142 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$0	Violation Final Penalty Total \$225
This violation Final Assessed Penalty (adjusted for limits) \$225	

Economic Benefit Worksheet

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 1
Case ID No. 61220
Reg. Ent. Reference No. RN105835375
Media Edwards Aquifer
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Training/Sampling delayed cost is captured in Economic Benefit No. 1.

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 \$0

TOTAL \$0

Screening Date 19-Aug-2021 **Docket No.** 2021-1120-MLM-E **PCW**
Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 1 *Policy Revision 5 (January 28, 2021)*
Case ID No. 61220 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN105835375
Media Edwards Aquifer
Enf. Coordinator Caleb Olson

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 213.4(j) and EAPP ID No. 13-09110601, Standard Condition No. 6

Violation Description

Failed to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the project area had been expanded to 53 acres; regulated activity had commenced on nine acres of land identified as undeveloped; the base fueling pad had been expanded to 5.6 acres of impervious cover; office buildings, associated parking, and a haul road had been constructed; the Site's entrance was approximately 2,600 feet east of the approved location; and two on-site septic systems had been installed.

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" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="20.0%"/>

Matrix Notes

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 type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="checkbox"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Two quarterly events are recommended from the investigation start date (March 30, 2021) to the screening date (August 19, 2021).

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="checkbox"/>	

Notes

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

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)

Economic Benefit Worksheet

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 1
Case ID No. 61220
Reg. Ent. Reference No. RN105835375
Media Edwards Aquifer
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$3,150	30-Mar-2021	4-Oct-2022	1.52	\$239	n/a	\$239
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Permit delayed cost is the estimated amount to submit and obtain approval for a modification of a previously approved WPAP. Date required is the investigation start date. Final date is the anticipated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,150

TOTAL

\$239



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	26-Jul-2021			
	PCW	31-Jan-2022	Screening	19-Aug-2021	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2
Reg. Ent. Ref. No.	RN105835375
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61220	No. of Violations	4
Docket No.	2021-1120-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Edwards Aquifer	Enf. Coordinator	Caleb Olson
		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	\$8,750
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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	-10.0% Adjustment	Subtotals 2, 3, & 7	-\$875
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Notes	Reduction for High Performer Classification.
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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	\$1,453	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$15,525	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,875
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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	
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Final Penalty Amount	\$7,875
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,875
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DEFERRAL	20.0%	Reduction	Adjustment	-\$1,575
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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	\$6,300
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Screening Date 19-Aug-2021

Docket No. 2021-1120-MLM-E

PCW

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2

Policy Revision 5 (January 28, 2021)

Case ID No. 61220

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN105835375

Media Water Quality

Enf. Coordinator Caleb Olson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 19-Aug-2021 **Docket No.** 2021-1120-MLM-E **PCW**
Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2 *Policy Revision 5 (January 28, 2021)*
Case ID No. 61220 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN105835375
Media Water Quality
Enf. Coordinator Caleb Olson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR05Z243, Part III, Section A.4(a)(1), (c), (d)(1), and (f)

Violation Description

Failed to implement all pollution prevention practices that are necessary to protect water quality in the receiving waters. Specifically, the Respondent constructed earthen berms around the process water ponds with highly erodible ponds fines and identified 19 separate noncompliant conditions with the berms concerning erosion and best management practices ("BMPs"). Additionally, the Employee Training Program and Employee Education had not been conducted.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 142 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

Two quarterly events are recommended from the investigation start date (March 30, 2021) to the screening date (August 19, 2021).

Good Faith Efforts to Comply

0.0%

Reduction \$0

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

Notes

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,435

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

Economic Benefit Worksheet

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2
Case ID No. 61220
Reg. Ent. Reference No. RN105835375
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction	\$15,000	30-Mar-2021	5-Aug-2022	1.35	\$68	\$1,351	\$1,419
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	30-Mar-2021	6-Jul-2022	1.27	\$16	n/a	\$16
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

Engineering/Construction delayed cost is the estimated amount to replace the berms surrounding the process water ponds with earthen berms composed of compacted soil and install adequate BMPs to prevent noncompliance conditions. Date required is the investigation start date. Final date is the anticipated date of compliance.

Training/Sampling delayed cost is the estimated amount to develop and implement procedures and conduct employee training to ensure that the Employee Training Program and Employee Education are properly conducted; the non-stormwater discharge inspections for the permitted outfalls are properly certified; quarterly visual monitoring is conducted at the Site entrance; summary descriptions of proposed stormwater pollution prevention plan ("SWP3") changes are attached to the Routine Facility Inspection checklists that have recommended BMP additions and modifications; signed/certified evaluation reports for the Annual Comprehensive Site Compliance Evaluations are properly prepared; the SWP3 is updated within 12 weeks of identifying the need for new or replacement BMPs; and named Team members participate in the inspections, maintenance, monitoring, and training activities required by the MSGP. Date required is the investigation start date. Final date is the anticipated 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 \$15,250

TOTAL \$1,435

Screening Date 19-Aug-2021 **Docket No.** 2021-1120-MLM-E **PCW**
Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2 *Policy Revision 5 (January 28, 2021)*
Case ID No. 61220 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN105835375
Media Water Quality
Enf. Coordinator Caleb Olson

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Sections B.1(c), B.2(c), B.3, and B.5(c)
Violation Description Failed to conduct inspections of disturbed areas as specified in the permit. Specifically, the Respondent did not certify the non-stormwater discharge inspections for the permitted outfalls, conduct quarterly visual monitoring at the Site entrance, document the name of the inspector on the February 27, 2018 Routine Facility Inspection report, attach summary descriptions of proposed SWP3 changes to the Routine Facility Inspection checklists, prepare a signed/certified evaluation report for the Annual Comprehensive Site Compliance Evaluations, and update the SWP3 within 12 weeks of identifying the need for new or replacement BMPs.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 5.0%
Potential		X			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 142 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

Two quarterly events are recommended from the investigation start date (March 30, 2021) to the screening date (August 19, 2021).

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

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

Estimated EB Amount \$2 **Violation Final Penalty Total** \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

Economic Benefit Worksheet

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2
Case ID No. 61220
Reg. Ent. Reference No. RN105835375
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$25	30-Mar-2021	6-Jul-2022	1.27	\$2	n/a	\$2
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

Record Keeping System delayed cost is the estimated amount to document the name of the inspector on the February 27, 2018 Routine Facility Inspection report. Date required is the investigation start date. Final date is the anticipated date of compliance.

 Training/Sampling delayed cost is captured in Economic Benefit No. 1.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$25

TOTAL \$2

Screening Date 19-Aug-2021 **Docket No.** 2021-1120-MLM-E **PCW**
Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2 *Policy Revision 5 (January 28, 2021)*
Case ID No. 61220 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN105835375
Media Water Quality
Enf. Coordinator Caleb Olson

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Section A.3(a), (b), and (d)
Violation Description Failed to identify and describe all activities and significant materials that may potentially be pollutant sources in the SWP3. Specifically, in the SWP3, the Respondent did not update the Inventory of Exposed Materials within 30 days following a significant change in material management practices that may affect exposure of materials to precipitation or runoff, describe the water recycling system or acknowledge previous issues with dry-weather flow, and identify exposed drums and other containers. Additionally, the Drainage Area Site Map did not provide details of stormwater flow at the Site entrance, the process wastewater treatment units, or the Sector P retention pond and the direction of flow from it; and did not identify swale structural control and maintenance control areas.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5.0%
	Potential		X		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 142 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

Two quarterly events are recommended from the investigation start date (March 30, 2021) to the screening date (August 19, 2021).

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

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

Estimated EB Amount \$16 **Violation Final Penalty Total** \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

Economic Benefit Worksheet

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2
Case ID No. 61220
Reg. Ent. Reference No. RN105835375
Media Violation No. Water Quality
 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$250	30-Mar-2021	6-Jul-2022	1.27	\$16	n/a	\$16
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

Record Keeping System delayed cost is the estimated amount to update the SWP3 to include the updated Inventory of Exposed Materials; identify the water recycling system, previous issues with dry-weather flow, and exposed drums and other containers in the SWP3; and include details of stormwater flow at the Site entrance, the process wastewater treatment units, and the Sector P retention pond and the direction of flow from it, and identify swale structural control and maintenance control areas. Date required is the investigation start date. Final date is the anticipated 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 \$250

TOTAL \$16

Screening Date 19-Aug-2021 **Docket No.** 2021-1120-MLM-E **PCW**
Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2 *Policy Revision 5 (January 28, 2021)*
Case ID No. 61220 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN105835375
Media Water Quality
Enf. Coordinator Caleb Olson

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Section A.1(a)(5) and A.2
Violation Description Failed to establish a Team and identify Team members who will be responsible for developing and revising the SWP3. Specifically, the named Team members were not participating in the inspections, maintenance, monitoring, and training activities required by the MSGP.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
			X		2.5%
	Between 70% and 30% of the rule requirements were not being met.				

Adjustment \$24,375

\$625

Violation Events

Number of Violation Events Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

Two quarterly events are recommended from the investigation start date (March 30, 2021) to the screening date (August 19, 2021).

Good Faith Efforts to Comply Reduction

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

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

Violation Subtotal \$1,250

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

Estimated EB Amount \$0 **Violation Final Penalty Total** \$1,125

This violation Final Assessed Penalty (adjusted for limits) \$1,125

Economic Benefit Worksheet

Respondent H. L. ZUMWALT CONSTRUCTION, INC. PCW No. 2
Case ID No. 61220
Reg. Ent. Reference No. RN105835375
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Training/Sampling delayed cost is captured in Economic Benefit No. 1.

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 \$0

TOTAL \$0

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 CN602748824, RN105835375, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN602748824, H. L. ZUMWALT CONSTRUCTION, INC. **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN105835375, FM 1283 RANCH QUARRY **Classification:** HIGH **Rating:** 0.00

Complexity Points: 6 **Repeat Violator:** NO

CH Group: 04 - Mining

Location: Five miles west of Farm-to-Market Road 471 and State Highway 211 on the north side of Farm-to-Market Road 1283 in Mico, Medina County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

AGGREGATE PRODUCTION OPERATION REGISTRATION AP0002903 **EDWARDS AQUIFER PERMIT** 13-09110601

EDWARDS AQUIFER PERMIT 13-09110601A **STORMWATER PERMIT** TXR05Z243

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

Date Compliance History Report Prepared: January 26, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 26, 2017 to January 26, 2022

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

Name: Mark Gamble

Phone: (512) 239-2587

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:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1 August 31, 2018 (1511823)

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
H. L. ZUMWALT
CONSTRUCTION, INC.
RN105835375**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2021-1120-MLM-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding H. L. ZUMWALT CONSTRUCTION, INC. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent operates an aggregate production operation located five miles west of Farm-to-Market Road 471 and State Highway 211 on the north side of Farm-to-Market Road 1283 in Mico, Medina County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$18,675 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$940 of the penalty and \$3,735 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order.

The remaining amount of \$14,000 of the undeferred penalty shall be paid in 14 monthly payments of \$1,000 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If the Respondent fails to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of

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

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

II. ALLEGATIONS

During an investigation conducted from March 30, 2021 through June 29, 2021, an investigator documented that the Respondent:

1. Failed to comply with the provisions of the approved Water Pollution Abatement Plan ("WPAP"), in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer Protection Plan ("EAPP") ID No. 13-09110601, Standard Conditions No. 2. Specifically, the earthen berm system surrounding the plant area and quarry pit approved in the WPAP had been constructed with highly erodible pond fines removed during the process water recycling system, berm inspections were not being conducted on a weekly basis, and repairs were not being completed in a timely manner. Additionally, records demonstrating that the quarry operators had undergone annual karst feature recognition training were not being maintained.
2. Failed to obtain approval of a modification to an approved WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(j) and EAPP ID No. 13-09110601, Standard Conditions No. 6. Specifically, the project area had been expanded to 53 acres; regulated activity had commenced on nine acres of land identified as undeveloped; the base fueling pad had been expanded to 5.6 acres of impervious cover; office buildings, associated parking, and a haul road had been constructed; the Site's entrance was approximately 2,600 feet east of the approved location; and two on-site septic systems had been installed.

3. Failed to implement all pollution prevention practices that are necessary to protect water quality in the receiving waters, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR05Z243, Part III, Section A.4(a)(1), (c), (d)(1), and (f). Specifically, the Respondent constructed earthen berms around the process water ponds with highly erodible ponds fines and identified 19 separate noncompliant conditions with the berms concerning erosion and best management practices ("BMPs"). Additionally, the Employee Training Program and Employee Education had not been conducted.
4. Failed to conduct inspections of disturbed areas as specified in the permit, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Sections B.1(c), B.2(c), B.3, and B.5(c). Specifically, the Respondent did not certify the non-stormwater discharge inspections for the permitted outfalls, conduct quarterly visual monitoring at the Site entrance, document the name of the inspector on the February 27, 2018 Routine Facility Inspection report, attach summary descriptions of proposed stormwater pollution prevention plan ("SWP3") changes to the Routine Facility Inspection checklists, prepare a signed/certified evaluation report for the Annual Comprehensive Site Compliance Evaluations, and update the SWP3 within 12 weeks of identifying the need for new or replacement BMPs.
5. Failed to identify and describe all activities and significant materials that may potentially be pollutant sources in the SWP3, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Section A.3(a), (b), and (d). Specifically, in the SWP3, the Respondent did not update the Inventory of Exposed Materials within 30 days following a significant change in material management practices that may affect exposure of materials to precipitation or runoff, describe the water recycling system or acknowledge previous issues with dry-weather flow, and identify exposed drums and other containers. Additionally, the Drainage Area Site Map did not provide details of stormwater flow at the Site entrance, the process wastewater treatment units, or the Sector P retention pond and the direction of flow from it; and did not identify swale structural control and maintenance control areas.
6. Failed to establish a Team and identify Team members who will be responsible for developing and revising the SWP3, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES MSGP No. TXR05Z243, Part III, Section A.1(a)(5) and A.2. Specifically, the named Team members were not participating in the inspections, maintenance, monitoring, and training activities required by the MSGP.

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: H. L. ZUMWALT CONSTRUCTION, INC., Docket No. 2021-1120-MLM-E" to:

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

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order:
 - i. Develop and implement procedures and conduct employee training to ensure that:
 - (1) Annual karst feature recognition training records are properly maintained;
 - (2) Berm inspections are conducted on a weekly basis;
 - (3) Berm repairs are completed in a timely manner;
 - (4) The Employee Training Program and Employee Education are properly conducted;
 - (5) Non-stormwater discharge inspections for the permitted outfalls are properly certified;
 - (6) Quarterly visual monitoring is conducted at the Site entrance;
 - (7) Summary descriptions of proposed SWP3 changes are attached to the Routine Facility Inspection checklist that have recommended BMP additions and modifications;
 - (8) Signed and certified evaluation reports for the Annual Comprehensive Site Compliance Evaluations are properly prepared;
 - (9) The SWP3 is updated within 12 weeks of identifying the need for new or replacement BMPs; and
 - (10) Named Team members participate in the inspections, maintenance, monitoring, and training activities by the MSGP.
 - ii. Update the SWP3 to include:

- (1) The name of the investigator on the February 27, 2018 Routine Facility Inspection report;
- (2) The updated Inventory of Exposed Materials;
- (3) The identified water recycling system, previous issues with dry weather flow, and exposed drums and other containers; and
- (4) Details of stormwater flow at the Site entrance, the process wastewater treatment units, and the Sector P retention pond and the direction of flow from it; and the identified swale structural control and maintenance control areas.

iii. Submit a request for a modification of a previously approved WPAP 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 30 days of such requests, or any other deadline specified in writing.

- b. Within 45 days after the effective date of this Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i(1) through (10) and 2.a.ii(1) through (4), in accordance with Ordering Provision No. 2.f.
- c. Within 60 days after the effective date of this Order, replace the berms constructed with pond fines with earthen berms composed of compacted soil, and install adequate BMPs to prevent noncompliance conditions.
- d. Within 75 days after the effective date of this Order, submit written certification of compliance with Ordering Provision No. 2.c, in accordance with Ordering Provision No. 2.f.
- e. Within 135 days after the effective date of this Order, submit written certification that approval of the modification of the previously approved WPAP has been obtained, in accordance with Ordering Provision No. 2.f.
- f. The written certifications of compliance required by Ordering Provision Nos. 2.b, 2.d, and 2.e shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. 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:

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

with a copy to:

Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 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 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 Enforcement Division 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



5/2/2023

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

Date

Name (Printed or typed)

Title

Authorized Representative of
H. L. ZUMWALT CONSTRUCTION, INC.

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