

**Executive Summary – Enforcement Matter – Case No. 61403**

**K2C-Austin, LLC**

**RN111294971**

**Docket No. 2021-1327-WR-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Unauthorized action which deprives others of water, severely affects aquatic life, or results in a safety hazard, property damage, or economic loss.

**Media:**

WR

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Landmark Nurseries Petal Street Property, 10900 Petal Street, Dallas, Dallas County

**Type of Operation:**

Commercial nursery

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** March 31, 2023

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$1,125

**Total Paid to General Revenue:** \$1,125

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Compliance History Classifications:**

Person/CN - N/A

Site/RN - N/A

**Major Source:** No

**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:** June 18, 2021

**Date(s) of NOE(s):** September 17, 2021

***Violation Information***

Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121].

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**K2C-Austin, LLC**  
**RN111294971**  
**Docket No. 2021-1327-WR-E**

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

By August 20, 2021, the Respondent removed the water impoundment equipment at the Site.

**Technical Requirements:**

N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Monica Larina, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-0184; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** Kevin Norris, Member, K2C-Austin, LLC, 1100 East Sandy Lake Road, Coppell, Texas 75019

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	20-Sep-2021	<b>Screening</b>	23-Sep-2021	<b>EPA Due</b>	
	<b>PCW</b>	25-Feb-2022				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	K2C-Austin, LLC
<b>Reg. Ent. Ref. No.</b>	RN111294971
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	61403	<b>No. of Violations</b>	1
<b>Docket No.</b>	2021-1327-WR-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Rights	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Katelyn Tubbs
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$5,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,500
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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.

<b>Compliance History</b>	<b>0.0%</b>	<b>Adjustment</b>	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No adjustment for Compliance History.

<b>Culpability</b>	No	<b>0.0%</b>	<b>Enhancement</b>	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	-\$375
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<b>Economic Benefit</b>	<b>0.0%</b>	<b>Enhancement*</b>	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$43  
Estimated Cost of Compliance: \$5,000  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,125
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b>	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$1,125
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,125
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<b>DEFERRAL</b>	<b>0.0%</b>	<b>Reduction</b>	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$1,125
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<b>Screening Date</b>	23-Sep-2021	<b>Docket No.</b>	2021-1327-WR-E	<b>PCW</b>
<b>Respondent</b>	K2C-Austin, LLC			
<b>Case ID No.</b>	61403			
<b>Reg. Ent. Reference No.</b>	RN111294971			
<b>Media</b>	Water Rights			
<b>Enf. Coordinator</b>	Katelyn Tubbs			

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> )	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)

N/A

**Adjustment Percentage (Subtotal 3)** 0%

### >> Compliance History Person Classification (Subtotal 7)

N/A

**Adjustment Percentage (Subtotal 7)** 0%

### >> Compliance History Summary

**Compliance History Notes**

No adjustment for Compliance History.

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

### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 0%

<b>Screening Date</b> 23-Sep-2021 <b>Respondent</b> K2C-Austin, LLC <b>Case ID No.</b> 61403 <b>Reg. Ent. Reference No.</b> RN111294971 <b>Media</b> Water Rights <b>Enf. Coordinator</b> Katelyn Tubbs		<b>Docket No.</b> 2021-1327-WR-E		<b>PCW</b> <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>	
<b>Violation Number</b> 1					
<b>Rule Cite(s)</b>		30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.121			
<b>Violation Description</b>		Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water. Specifically, the Respondent constructed an impoundment located on a tributary of Dixon Branch within the Trinity River Basin. Additionally, diversions were being made from a point along Dixon Branch for irrigation of commercially sold container plants.			
		<b>Base Penalty</b>		\$5,000	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	<b>Release</b>		<b>Harm</b>		<b>Percent</b> 0.0%
		Major	Moderate	Minor	
	Actual				
	Potential				
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	<b>Percent</b> 10.0%
		x			
Matrix Notes	100% of the rule requirements were not met.				
		<b>Adjustment</b>		\$4,500	
				\$500	
<b>Violation Events</b>					
Number of Violation Events		3		63 Number of violation days	
	daily				
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				
		<b>Violation Base Penalty</b> \$1,500			
Three monthly events are recommended from the investigation date (June 18, 2021) to the compliance date (August 20, 2021).					
<b>Good Faith Efforts to Comply</b>		25.0%		Reduction \$375	
		Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer			
	Extraordinary				
	Ordinary	x			
	N/A				
	Notes	The Respondent achieved compliance by August 20, 2021.			
		<b>Violation Subtotal</b>		\$1,125	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		\$43		<b>Violation Final Penalty Total</b> \$1,125	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>		\$1,125	

# Economic Benefit Worksheet

**Respondent** K2C-Austin, LLC  
**Case ID No.** 61403  
**Reg. Ent. Reference No.** RN111294971  
**Media** Water Rights  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				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)	\$5,000	18-Jun-2021	20-Aug-2021	0.17	\$43	n/a	\$43

Notes for DELAYED costs

Estimated Other cost to remove water impoundment equipment. The Date Required is the investigation date, and the Final Date is the date of compliance.

## Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$43



# Compliance History Report

Compliance History Report for CN605910694, RN111294971, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

**Customer, Respondent, or Owner/Operator:** CN605910694, K2C-Austin, LLC

**Classification:** NOT APPLICABLE

**Rating:** N/A

**Regulated Entity:** RN111294971, LANDMARK NURSERIES  
PETAL STREET PROPERTY

**Classification:** NOT APPLICABLE

**Rating:** N/A

**Complexity Points:** N/A

**Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** 10900 Petal Street in Dallas, Dallas County, Texas

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**

**WATER RIGHTS REGION ID NUMBER** R04111294971

**Compliance History Period:** September 01, 2017 to August 31, 2022

**Rating Year:** 2022

**Rating Date:** 09/01/2022

**Date Compliance History Report Prepared:** January 20, 2023

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** January 20, 2018 to January 20, 2023

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

**Name:** Laura Draper

**Phone:** (254) 761-3012

## Site and Owner/Operator History:

- |  |    |
|--|----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | NO |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |

## Components (Multimedia) for the Site Are Listed in Sections A - J

**A. Final Orders, court judgments, and consent decrees:**

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

N/A

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
K2C-AUSTIN, LLC  
RN111294971

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2021-1327-WR-E

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding K2C-Austin, LLC (the "Respondent") under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

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

### I. FINDINGS OF FACT

1. The Respondent owns a commercial nursery located at 10900 Petal Street in Dallas, Dallas County, Texas (the "Site"). The Site adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(51).
2. During an investigation conducted at the Site on June 18, 2021, an investigator documented that the Respondent constructed an impoundment located on a tributary of Dixon Branch within the Trinity River basin. Additionally, diversions were being made from a point along Dixon Branch for irrigation of commercially sold container plants.
3. The Executive Director recognizes that by August 20, 2021, the Respondent removed the water impoundment equipment at the Site.



## **II. CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 11 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water, in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121.
3. Pursuant to TEX. WATER CODE § 11.0842(a), the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of \$1,125 is justified by the facts recited in this Order and considered in light of the factors set forth in TEX. WATER CODE § 11.0842(c). The Respondent paid the \$1,125 penalty.

## **III. ORDERING PROVISIONS**

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

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: K2C-Austin, LLC, Docket No. 2021-1327-WR-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. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon 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.
4. 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.

5. 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 in this Order.
6. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
7. This Order, 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

6/20/2023

-----  
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  
K2C-Austin, LLC

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

**Instructions:** Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.