

Executive Summary – Enforcement Matter – Case No. 61796

J & K EXCAVATION, LLC

RN111127536

Docket No. 2022-0088-WQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Sunset Meadows located at the intersection of Richard Road and Farm-to-Market Road
1446, Waxahachie, Ellis County

Type of Operation:

Residential construction site

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 20, 2023

Comments Received: No

Penalty Information

Total Penalty Assessed: \$16,004

Amount Deferred for Expedited Settlement: \$3,200

Total Paid to General Revenue: \$12,804

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): October 19, 2021

Complaint Information: Complainant expressed concern over failing controls and accumulated off-site sediment.

Date(s) of Investigation: November 8, 2021

Date(s) of NOE(s): December 16, 2021

Executive Summary – Enforcement Matter – Case No. 61796
J & K EXCAVATION, LLC
RN111127536
Docket No. 2022-0088-WQ-E

Violation Information

1. Failed to install and maintain best management practices at the Site which resulted in a discharge of pollutants into or adjacent to any water in the state. Specifically, silt fencing at the southeast corner of the Site was observed to have been overtopped and collapsed, which allowed sediment to bypass the control measures and discharge off-site [30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR1533DQ, Part III, Section G.1].
2. Failed to remove accumulations of sediment at a frequency that minimizes off-site impacts. Specifically, accumulated sediment was observed beyond the southeastern outfall at the fence line and extending to a stock pond on the adjacent property [30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121(a), and TPDES General Permit No. TXR1533DQ, Part III, Section F.6(d)].
3. Failed to initiate stabilization measures where construction activities have temporarily ceased and will not resume within 14 days or where construction activities have permanently ceased [30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121(a), and TPDES General Permit No. TXR1533DQ, Part III, Section G.2].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

- a. On January 4, 2022, terminated the construction general permit;
- b. By April 12, 2023, submitted documentation demonstrating that final stabilization had been achieved at the Site; and
- c. By June 4, 2023, removed and disposed of accumulated sediment in the adjacent property's stock pond.

Technical Requirements:

N/A

Contact Information

Executive Summary – Enforcement Matter – Case No. 61796

J & K EXCAVATION, LLC

RN111127536

Docket No. 2022-0088-WQ-E

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Harley Hobson, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-1337; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Karen Trees, President, J & K EXCAVATION, LLC, P.O. Box 886, Italy, Texas 76651

Joshua Trees, Vice President, J & K EXCAVATION, LLC, P.O. Box 886, Italy, Texas 76651

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	20-Dec-2021		
	PCW	27-Jan-2022	Screening	3-Jan-2022
			EPA Due	

RESPONDENT/FACILITY INFORMATION				
Respondent	J & K EXCAVATION, LLC			
Reg. Ent. Ref. No.	RN111127536			
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor	

CASE INFORMATION				
Enf./Case ID No.	61796	No. of Violations	3	
Docket No.	2022-0088-WQ-E	Order Type	1660	
Media Program(s)	Water Quality	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Harley Hobson	
		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	\$17,500
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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	-10.0%	Adjustment	Subtotals 2, 3, & 7	-\$1,750
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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	-\$250
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,608	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$15,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$15,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	3.3%	Adjustment	\$504
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 1.			
	Final Penalty Amount	\$16,004		

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,004
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DEFERRAL	20.0%	Reduction	Adjustment	-\$3,200
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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	\$12,804
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Screening Date

3-Jan-2022

Docket No.

2022-0088-WQ-E

PCW

Respondent

J & K EXCAVATION, LLC

Case ID No.

61796

Reg. Ent. Reference No.

RN111127536

Media

Water Quality

Enf. Coordinator

Harley Hobson

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)

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	3-Jan-2022	Docket No.	2022-0088-WQ-E	PCW
Respondent	J & K EXCAVATION, LLC	<i>Policy Revision 5 (January 28, 2021)</i>		
Case ID No.	61796	<i>PCW Revision February 11, 2021</i>		
Reg. Ent. Reference No.	RN111127536			
Media	Water Quality			
Enf. Coordinator	Harley Hobson			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), Tex. Water Code § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR1533DQ, Part III, Section G.1			
Violation Description	Failed to install and maintain best management practices ("BMPs") at the Site which resulted in a discharge of pollutants into or adjacent to any water in the state. Specifically, silt fencing at the southeast corner of the Site was observed to have been overtopped and collapsed, which allowed sediment to bypass the control measures and discharge off-site.			
Base Penalty			\$25,000	
>> Environmental, Property and Human Health Matrix				
OR	Release	Harm		
		Major	Moderate	Minor
	Actual			x
Potential				
Percent			15.0%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
Percent			0.0%	
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment			\$21,250	
			\$3,750	
>> Violation Events				
Number of Violation Events		2	56	Number of violation days
	daily			
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
Violation Base Penalty			\$7,500	
Two monthly events are recommended from the November 8, 2021 investigation date to the January 3, 2022 screening date.				
Good Faith Efforts to Comply		0.0%	Reduction	\$0
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer		
Extraordinary				
Ordinary				
N/A	x			
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal			\$7,500	
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		\$504	Violation Final Penalty Total	\$6,969
This violation Final Assessed Penalty (adjusted for limits)			\$6,969	

Economic Benefit Worksheet

Respondent Case ID No. J & K EXCAVATION, LLC 61796
Reg. Ent. Reference No. RN111127536
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				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							

Avoided CostsANNUALIZE 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	\$500	8-Nov-2021	3-Jan-2022	0.15	\$4	\$500	\$504
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs	Estimated avoided cost to install and maintain BMPs at the Site. The Date Required is the investigation date, and the Final Date is the screening date.						

Approx. Cost of Compliance	\$500	TOTAL	\$504
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Screening Date 3-Jan-2022 Respondent J & K EXCAVATION, LLC Case ID No. 61796 Reg. Ent. Reference No. RN111127536 Media Water Quality Enf. Coordinator Harley Hobson		Docket No. 2022-0088-WQ-E PCW <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>																
Violation Number 2 Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), Tex. Water Code § 26.121(a), and TPDES General Permit No. TXR1533DQ, Part III, Section F.6(d) Violation Description Failed to remove accumulations of sediment at a frequency that minimizes off-site impacts. Specifically, accumulated sediment was observed beyond the southeastern outfall at the fence line and extending to a stock pond on the adjacent property.		Base Penalty \$25,000																
>> Environmental, Property and Human Health Matrix																		
OR	<table border="1"> <tr> <td></td> <th colspan="3">Harm</th> </tr> <tr> <th>Release</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td>x</td> </tr> <tr> <td>Potential</td> <td></td> <td></td> <td></td> </tr> </table>		Harm			Release	Major	Moderate	Minor	Actual			x	Potential				Percent 15.0%
		Harm																
Release	Major	Moderate	Minor															
Actual			x															
Potential																		
>> Programmatic Matrix																		
Matrix Notes	<table border="1"> <tr> <td></td> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>		Falsification	Major	Moderate	Minor						Percent 0.0%						
		Falsification	Major	Moderate	Minor													
Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.		Adjustment \$21,250																
		\$3,750																
Violation Events																		
Number of Violation Events 2		56 Number of violation days																
	<table border="1"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td>x</td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </table>	daily		weekly		monthly	x	quarterly		semiannual		annual		single event		Violation Base Penalty \$7,500		
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Good Faith Efforts to Comply 0.0%		Reduction \$0																
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	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer																
Extraordinary																		
Ordinary																		
N/A	x																	
Notes	The Respondent does not meet the good faith criteria for this violation.																	
		Violation Subtotal \$7,500																
Economic Benefit (EB) for this violation		Statutory Limit Test																
Estimated EB Amount \$392		Violation Final Penalty Total \$6,969																
This violation Final Assessed Penalty (adjusted for limits)		\$6,969																

Economic Benefit Worksheet

Respondent Case ID No. Reg. Ent. Reference No. Media Violation No. J & K EXCAVATION, LLC 61796 RN111127536 Water Quality 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	\$5,000	8-Nov-2021	4-Jun-2023	1.57	\$392	n/a	\$392
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs	Estimated Remediation/Disposal cost to remove and dispose of accumulated sediment from in the adjacent property's stock pond. 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	\$392
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Screening Date 3-Jan-2022 Respondent J & K EXCAVATION, LLC Case ID No. 61796 Reg. Ent. Reference No. RN111127536 Media Water Quality Enf. Coordinator Harley Hobson		Docket No. 2022-0088-WQ-E PCW																		
		<i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>																		
Violation Number 3																				
Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), Tex. Water Code § 26.121(a), and TPDES General Permit No. TXR1533DQ, Part III, Section G.2																				
Violation Description Failed to initiate stabilization measures where construction activities have temporarily ceased and will not resume within 14 days or where construction activities have permanently ceased.																				
		Base Penalty \$25,000																		
>> Environmental, Property and Human Health Matrix																				
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		Falsification	Major	Moderate	Minor															
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		56 Number of violation days																		
<table border="1"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td>x</td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </table>		daily		weekly		monthly	x	quarterly		semiannual		annual		single event		Violation Base Penalty \$2,500				
daily																				
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	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer																		
Extraordinary																				
Ordinary		x																		
N/A																				
Notes The Respondent achieved compliance by April 12, 2023.																				
		Violation Subtotal \$2,250																		
Economic Benefit (EB) for this violation		Statutory Limit Test																		
Estimated EB Amount \$712		Violation Final Penalty Total \$2,065																		
		This violation Final Assessed Penalty (adjusted for limits) \$2,065																		

Economic Benefit Worksheet

Respondent Case ID No. J & K EXCAVATION, LLC 61796
Reg. Ent. Reference No. RN111127536
Media Water Quality
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	\$10,000	8-Nov-2021	12-Apr-2023	1.42	\$712	n/a	\$712
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs	Estimated Remediation/Disposal cost to reach final stabilization at the Site. The Date Required is the investigation date, and the Final Date is the compliance date.						

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	\$712
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Compliance History Report

Compliance History Report for CN603318494, RN111127536, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN603318494, J & K EXCAVATION, LLC **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN111127536, SUNSET MEADOWS **Classification:** HIGH **Rating:** 0.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 09 - Construction

Location: Intersection of Richard Road and Farm-to-Market 1446 in Waxahachie, Ellis County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

Compliance History Period: September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

Date Compliance History Report Prepared: February 27, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 27, 2018 to February 27, 2023

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

Name: Harley Hobson

Phone: (512) 239-1337

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
J & K EXCAVATION, LLC
RN111127536

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2022-0088-WQ-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 J & K EXCAVATION, LLC (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 a residential construction site located at the intersection of Richard Road and Farm-to-Market Road 1446 in Waxahachie, Ellis 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 \$16,004 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$12,804 of the penalty and \$3,200 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.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Site:
 - a. On January 4, 2022, terminated the construction general permit;
 - b. By April 12, 2023, submitted documentation demonstrating that final stabilization had been achieved at the Site; and
 - c. By June 4, 2023, removed and disposed of accumulated sediment in the adjacent property's stock pond.

II. ALLEGATIONS

During an investigation at the Site conducted on November 8, 2021, an investigator documented that the Respondent:

1. Failed to install and maintain best management practices at the Site which resulted in a discharge of pollutants into or adjacent to any water in the state, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR1533DQ, Part III, Section G.1. Specifically, silt fencing at the southeast corner of the Site was observed to have been overtopped and collapsed, which allowed sediment to bypass the control measures and discharge off-site.
2. Failed to remove accumulations of sediment at a frequency that minimizes off-site impacts, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121(a), and TPDES General Permit No. TXR1533DQ, Part III, Section F.6(d). Specifically, accumulated sediment was observed beyond the southeastern outfall at the fence line and extending to a stock pond on the adjacent property.
3. Failed to initiate stabilization measures where construction activities have temporarily ceased and will not resume within 14 days or where construction activities have permanently ceased, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121(a), and TPDES General Permit No. TXR1533DQ, Part III, Section G.2.

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: J & K EXCAVATION, LLC, Docket No. 2022-0088-WQ-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. 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.
6. 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.

7. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

11/21/2023

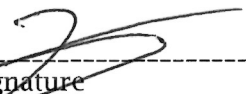
Date

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

9/12/2023

Date

Tasha Price

Name (Printed or typed)
Authorized Representative of
J & K EXCAVATION, LLC

WP

Title

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