

Executive Summary – Enforcement Matter – Case No. 62026

**Francis Excavating LLC
RN111405148
Docket No. 2022-0249-WQ-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Francis Excavating S Kings Highway, 1310 South Kings Highway, Texarkana, Bowie County

Type of Operation:

Small construction site and 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: November 17, 2023

Comments Received: No

Penalty Information

Total Penalty Assessed: \$15,000

Amount Deferred for Expedited Settlement: \$3,000

Total Paid to General Revenue: \$345

Total Due to General Revenue: \$11,655

Payment Plan: 35 payments of \$333 each

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: \$3,000

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 6, 2022

Date(s) of NOE(s): February 28, 2022

Violation Information

1. Failed to register the Site as an APO no later than the 10th business day before the beginning date of regulated activities [30 TEX. ADMIN. CODE § 342.25(b)].

Executive Summary – Enforcement Matter – Case No. 62026

**Francis Excavating LLC
RN111405148
Docket No. 2022-0249-WQ-E**

2. Failed to obtain authorization to discharge stormwater associated with construction activities. Specifically, the Respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].

3. Failed to obtain authorization to discharge stormwater associated with sand and gravel pit activities. Specifically, the Respondent was performing sand and gravel pit activities prior to obtaining authorization under TPDES General Permit No. TXR050000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

i. Register the Site as an APO through the State of Texas Environmental Electronic Reporting System ("STEERS");

ii. Develop and implement a stormwater pollution prevention plan to comply with the requirements of TPDES General Permit No. TXR150000 and TPDES General Permit No. TXR050000;

iii. Post a site notice and submit a copy of the site notice to the receiving municipal separate storm sewer system to comply with the requirements of TPDES General Permit No. TXR150000;

iv. Submit a Notice of Intent ("NOI") through STEERS to obtain authorization to discharge stormwater associated with construction activities to comply with the requirements of TPDES General Permit No. TXR150000; and

v. Submit a NOI through STEERS to obtain authorization to discharge stormwater associated with sand and gravel pit activities to comply with the requirements of TPDES General Permit No. TXR050000.

b. Within 45 days, submit written certification to demonstrate compliance with a.

Executive Summary – Enforcement Matter – Case No. 62026
Francis Excavating LLC
RN111405148
Docket No. 2022-0249-WQ-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Madison Stringer, Enforcement Division,
Enforcement Team 1, MC 219, (512) 239-1126; Michael Parrish, Enforcement Division,
MC 219, (512) 239-2548

Respondent: Greg Francis, Managing Member, Francis Excavating LLC, P.O. Box 1009,
Nash, Texas 75569

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	28-Feb-2022			
	PCW	1-Mar-2022	Screening	1-Mar-2022	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Francis Excavating LLC				
Reg. Ent. Ref. No.	RN111405148				
Facility/Site Region	5-Tyler	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	62026	No. of Violations	1		
Docket No.	2022-0249-WQ-E	Order Type	1660		
Media Program(s)	Aggregate Production Operation	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Madison Stringer		
		EC's Team	Enforcement Team 1		
Admin. Penalty \$	Limit Minimum	\$5,000	Maximum	\$20,000	Violation Maximum
					\$40,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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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	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment for Compliance History.
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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	\$84	<i>*Capped at the Total EB \$ Amount</i>
Estimated Cost of Compliance	\$790	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,000
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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	\$2,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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Notes	The final assessed penalty has been adjusted to meet the statutory requirements of Tex. Water Code § 28A.102.
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DEFERRAL	20.0%	Reduction	Adjustment	-\$1,000
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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	\$4,000
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Screening Date

1-Mar-2022

Docket No.

2022-0249-WQ-E

PCW

Respondent

Francis Excavating LLC

Case ID No.

62026

Reg. Ent. Reference No.

RN111405148

Media

Aggregate Production Operation

Enf. Coordinator

Madison Stringer

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)

Unclassified

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%

Screening Date		1-Mar-2022		Docket No.		2022-0249-WQ-E		PCW	
Respondent		Francis Excavating LLC							
Case ID No.		62026							
Reg. Ent. Reference No.		RN111405148							
Media		Aggregate Production Operation							
Enf. Coordinator		Madison Stringer							
Violation Number		1							
Rule Cite(s)		30 Tex. Admin. Code § 342.25(b)							
Violation Description		Failed to register the Site as an aggregate production operation ("APO") no later than the 10th business day before the beginning date of regulated activities.							
		Base Penalty						\$20,000	
>> Environmental, Property and Human Health Matrix									
OR	Release		Major		Moderate		Minor		
	Actual								
	Potential								
									Percent 0.0%
>> Programmatic Matrix									
		Falsification		Major		Moderate		Minor	
				x					
								Percent 10.0%	
Matrix Notes		100% of the rule requirements were not met.							
		Adjustment						\$18,000	
								\$2,000	
Violation Events									
		Number of Violation Events		1		54		Number of violation days	
		daily							
		weekly							
		monthly							
		quarterly							
		semiannual							
		annual							
		single event		x					
		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						\$2,000	
Economic Benefit (EB) for this violation									
		Estimated EB Amount		\$84		Violation Final Penalty Total		\$2,000	
		This violation Final Assessed Penalty (adjusted for limits)						\$5,000	

Economic Benefit Worksheet

Respondent Francis Excavating LLC
Case ID No. 62026
Reg. Ent. Reference No. RN111405148
Media Aggregate Production Operation
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	\$790	6-Jan-2022	21-Feb-2024	2.13	\$84	n/a	\$84
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs	Actual Permit cost to register the Site as an APO. Date Required is the investigation date. Final Date is the estimated compliance date.						

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				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs							

Approx. Cost of Compliance	\$790	TOTAL	\$84
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Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	28-Feb-2022	Screening	1-Mar-2022	EPA Due	
	PCW	1-Mar-2022				

RESPONDENT/FACILITY INFORMATION

Respondent	Francis Excavating LLC		
Reg. Ent. Ref. No.	RN111405148		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	62026	No. of Violations	2
Docket No.	2022-0249-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Madison Stringer
		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	\$10,000
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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	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for Compliance History.

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

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: \$567
Estimated Cost of Compliance: \$5,325
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,000
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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:

Final Penalty Amount: \$10,000

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,000
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,000
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$8,000
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Screening Date	1-Mar-2022	Docket No.	2022-0249-WQ-E	PCW
Respondent	Francis Excavating LLC			
Case ID No.	62026			
Reg. Ent. Reference No.	RN111405148			
Media	Water Quality			
Enf. Coordinator	Madison Stringer			

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)

Unclassified

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%

Screening Date 1-Mar-2022 Respondent Francis Excavating LLC Case ID No. 62026 Reg. Ent. Reference No. RN111405148 Media Water Quality Enf. Coordinator Madison Stringer Violation Number 1	Docket No. 2022-0249-WQ-E	PCW <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>
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Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)
Violation Description	Failed to obtain authorization to discharge stormwater associated with construction activities. Specifically, the Respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System General Permit No. TXR150000.

Base Penalty	\$25,000
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>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 10.0%

Matrix Notes	100% of the rule requirement was not met.
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Adjustment	\$22,500
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	\$2,500
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Violation Events

Number of Violation Events	2	54	Number of violation days
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	daily				Violation Base Penalty \$5,000
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				

Two monthly events are recommended, from the January 6, 2022 investigation date to the March 1, 2022 screening date.	
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Good Faith Efforts to Comply

	0.0%	
	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	\$5,000
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Economic Benefit (EB) for this violation

	Statutory Limit Test
Estimated EB Amount	\$290
	Violation Final Penalty Total \$5,000
This violation Final Assessed Penalty (adjusted for limits) \$5,000	

Economic Benefit Worksheet

Respondent Francis Excavating LLC
Case ID No. 62026
Reg. Ent. Reference No. RN111405148
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	\$225	6-Jan-2022	21-Feb-2024	2.13	\$24	n/a	\$24
Other (as needed)	\$2,500	6-Jan-2022	21-Feb-2024	2.13	\$266	n/a	\$266

Notes for DELAYED costs

Actual Permit Cost to submit a Notice of Intent ("NOI") to obtain authorization to discharge stormwater. Date Required is the investigation date. Final Date is the estimated date of compliance.

Estimated Other cost to develop and implement a stormwater pollution prevention plan, post a site notice, and submit a copy of the site notice to the receiving municipal separate storm sewer system. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,725

TOTAL

\$290

Screening Date 1-Mar-2022 Respondent Francis Excavating LLC Case ID No. 62026 Reg. Ent. Reference No. RN111405148 Media Water Quality Enf. Coordinator Madison Stringer Violation Number 2 Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c) Violation Description Failed to obtain authorization to discharge stormwater associated with sand and gravel pit activities. Specifically, the Respondent was performing sand and gravel pit activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System General Permit No. TXR050000.	Docket No. 2022-0249-WQ-E	PCW <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>
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	Base Penalty \$25,000
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>> Environmental, Property and Human Health Matrix

OR	Release	Harm		
		Major Moderate Minor		
	Actual			
	Potential			
				Percent 0.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			
					Percent 10.0%

Matrix Notes	100% of the rule requirement was not met.
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	Adjustment \$22,500
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	\$2,500
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Violation Events

Number of Violation Events	2	54	Number of violation days
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	daily		
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		

	Violation Base Penalty \$5,000
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Two monthly events are recommended, from the January 6, 2022 investigation date to the March 1, 2022 screening date.	
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Good Faith Efforts to Comply

	0.0%	
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

	The Respondent does not meet the good faith criteria for this violation.
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	Violation Subtotal \$5,000
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Economic Benefit (EB) for this violation

	\$277	
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Statutory Limit Test

	\$5,000	
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	This violation Final Assessed Penalty (adjusted for limits) \$5,000
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Economic Benefit Worksheet

Respondent Francis Excavating LLC
Case ID No. 62026
Reg. Ent. Reference No. RN111405148
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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$100	6-Jan-2022	21-Feb-2024	2.13	\$11	n/a	\$11
Other (as needed)	\$2,500	6-Jan-2022	21-Feb-2024	2.13	\$266	n/a	\$266

Notes for DELAYED costs

Actual Permit Cost to submit a Notice of Intent ("NOI") to obtain authorization to discharge stormwater. Date Required is the investigation date. Final Date is the estimated date of compliance.

Estimated Other cost to develop and implement a stormwater pollution prevention plan. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,600

TOTAL

\$277

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 CN605767557, RN111405148, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN605767557, Francis Excavating LLC **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN111405148, FRANCIS EXCAVATING S KINGS HWY **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 1310 South Kings Highway, Texarkana, Bowie County, Texas

TCEQ Region: REGION 05 - TYLER

ID Number(s):
WATER QUALITY NON-PERMITTED ID NUMBER R05

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

Date Compliance History Report Prepared: February 28, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 28, 2017 to February 28, 2022

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Ellen Ojeda **Phone:** (512) 239-2581

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.):

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
FRANCIS EXCAVATING LLC
RN111405148

§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY
§

AGREED ORDER DOCKET NO. 2022-0249-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 Francis Excavating LLC (the "Respondent") under the authority of TEX. WATER CODE chs. 7, 26, and 28A. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a small construction site located at 1310 South Kings Highway in Texarkana, Bowie County, Texas (the "Site"). The Respondent is a responsible party as defined in TEX. WATER CODE § 28A.001(6), because it is an operator as defined in TEX. WATER CODE § 28A.001(4), of an aggregate production operation ("APO") at the Site. Aggregates are being or have been removed from the Site's earth. Therefore the Site is an APO as defined in TEX. WATER CODE § 28A.001(1). 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 chs. 26 and 28A 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 \$15,000 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$345 of the penalty, and \$3,000 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.

The remaining amount of \$11,655 of the undeferred penalty shall be paid in 35 monthly payments of \$333 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 at the Site on January 6, 2022, an investigator documented that the Respondent:

1. Failed to register the Site as an APO no later than the 10th business day before the beginning date of regulated activities, in violation of 30 TEX. ADMIN. CODE § 342.25(b).
2. Failed to obtain authorization to discharge stormwater associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c). Specifically, the Respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000.
3. Failed to obtain authorization to discharge stormwater associated with sand and gravel pit activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c). Specifically, the Respondent was performing sand and gravel pit activities prior to obtaining authorization under TPDES General Permit No. TXR050000.

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: Francis Excavating LLC, Docket No. 2022-0249-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. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order:
 - i. Register the Site as an APO through the State of Texas Environmental Electronic Reporting System ("STEERS");
 - ii. Develop and implement a stormwater pollution prevention plan to comply with the requirements of TPDES General Permit No. TXR150000 and TPDES General Permit No. TXR050000;
 - iii. Post a site notice and submit a copy of the site notice to the receiving municipal separate storm sewer system to comply with the requirements of TPDES General Permit No. TXR150000;
 - iv. Submit a Notice of Intent through STEERS to obtain authorization to discharge stormwater associated with construction activities to comply with the requirements of TPDES General Permit No. TXR150000; and
 - v. Submit a Notice of Intent through STEERS to obtain authorization to discharge stormwater associated with sand and gravel pit activities to comply with the requirements of TPDES General Permit No. TXR050000.
 - b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be signed by the Respondent and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

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



For the Executive Director

12/13/2023

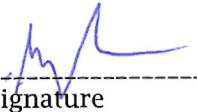
Date

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

10-12-23

Date

Greg Francis

Name (Printed or typed)
Authorized Representative of
Francis Excavating LLC

Managing Member

Title

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