

## **TCEQ Interoffice Memorandum**

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**To:** Mary Smith, General Counsel  
Colleen Ford, Assistant General Counsel

**Thru:** JSR Jess Robinson, Senior Attorney  
Litigation Division

**From:** Willam Hogan, Staff Attorney  
Litigation Division

**Date:** September 27, 2024

**Subject:** **Backup Revision**  
**October 11, 2024 Commission Agenda**  
Draft Item No. 23 - ARCH-CON CORPORATION  
Docket No. 2022-0374-WQ-E

Enclosed please find the following:

**Page 1 of the Executive Summary:**

“Interested Third Parties” and “Comments Received” sections were amended to reflect receipt of public comments from a complainant and issuance of the Executive Director’s response.

**Additional Documents Included as Supplemental Backup:**

- September 1, 2024 Comment received, regarding proposed TCEQ Default Order Docket No. 2022-0374-WQ-E;
- September 27, 2024 TCEQ Interoffice Memorandum to Commissioners, regarding the Executive Director’s Response to Comment; and
- September 27, 2024 TCEQ Letter to Complainant who had submitted the Comment.

**Counsel for Respondent:**

Chris Scheurich, Counsel  
ARCH-CON CORPORATION  
190 T C Jester Boulevard, Suite 200  
Houston, Texas 77007-4705

**Respondent Contact:**

Jason Cooper, President  
ARCH-CON CORPORATION  
190 T C Jester Boulevard, Suite 200  
Houston, Texas 77007-4705

## **TCEQ Interoffice Memorandum**

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Please do not hesitate to call me at (512) 239-3400 if you have any questions regarding this matter.

cc:     Harley Hobson, Enforcement Division  
         Westin Massey, Houston Regional Office  
         Gill Valls, Office of the General Counsel  
         Michael Parrish, Enforcement Division  
         Leslie Gann, Enforcement Division  
         Stuart Beckley, Enforcement Division  
         Chris Scheurich, Counsel for Respondent

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 62149  
ARCH-CON CORPORATION  
RN111329280  
Docket No. 2022-0374-WQ-E

Page 1 of 2

**Order Type:**  
Default Order

**Media:**  
WQ

**Small Business:**  
Yes

**Location Where Violations Occurred:**  
36488 Farm-to-Market Road 1736, Hempstead, Waller County (the “Site”)

**Type of Operation:**  
construction site

**Other Significant Matters:**

Additional Pending Enforcement Actions: None  
Past-Due Penalties: None  
Past-Due Fees: None  
Other: None  
Interested Third Parties: ~~None~~ Dr. Kristi Hicks (complainant)

**Texas Register Publication Date:** August 16, 2024

**Comments Received:** ~~None~~ Yes, from Dr. Kristi Hicks (complainant); response issued, no changes made to Order

**Penalty Information**

**Total Penalty Assessed:** \$4,725  
**Total Paid to General Revenue:** \$0  
**Total Due to General Revenue:** \$4,725

**Compliance History Classifications:**

Person/CN – UNCLASSIFIED  
Site/RN – N/A

**Major Source:** No  
**Statutory Limit Adjustment:** None  
**Applicable Penalty Policy:** January 28, 2021

**Investigation Information**

**Complaint Date(s):** February 1, 2022  
*Complaint Information:* The complainant alleges inadequate BMPs and sediment discharge.

**Date of Investigation:** February 16, 2022  
**Date of NOV:** November 30, 2021  
**Date of NOE:** March 21, 2022

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Other: None  
Interested Third Parties: Dr. Kristi Hicks (complainant)

**Texas Register Publication Date:** August 16, 2024

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# Public Comments

Dated: 9/01/2024

To: William Hogan  
P.O. Box 13087, MC 175  
Austin, Texas 78711-3087

From: Kristi Hicks, PhD  
36640 FM 1736 Rd  
Hempstead, TX 77445

## Introduction

Thank you for giving me the opportunity to submit public comments on this Default Order Docket No. 2022-0374-WQ-E. My name is Kristi Hicks, and I have a bachelors, masters and doctorate in Civil Engineering. During my career in Civil Engineering, I was part of a nationwide project that audited construction sites for compliance with NPDES permits. I completed 68 audits for this project and became well versed in the NPDES permits for several states. Each audit consisted of reviewing the SWPPP, visiting the site and compiling the results in a report. At the time, this was a fun project, I enjoyed the work and looked forward to getting outside and on job sites. Never did I think this experience would have been very helpful preparation for a life in the country running a small regenerative farm with our extended family. However, a callous neighbor (Owner) with a garish construction project and a negligent Contractor very quickly brought my past training into new light.

On October 1, 2021 a 6+ inch rain event occurred on our property. It is usually a welcomed event as summer comes to a close to get a good drenching, but on this day, it was catastrophic for our farm. Our farm was three years old, we had three young children, we had just moved our elderly parents onto our property to be close to the grandkids and we were well into making our property productive, fertile and beautiful. The neighbors had, nearly one month earlier, started a very large construction project with an estimated 28 acres of disturbed area. On this rainy morning, the neighbors had no functioning sedimentation basin and only one row of silt fence protecting our property from their project. We watched in horror as a veritable river of dirty water flowed onto our property dumping an estimated 400 cubic yards of sediment in several locations, including several feet thick into our drainage swale, and filling in our only pond on the property. To say I was horrified is an understatement.

Because of my background in auditing construction sites for compliance with NPDES permits, I thought naively that they would quickly clean it up and contact us to find a

remedy. I jumped online and reviewed the TPDES Construction General Permit which states in Part III, Section F, 6. (d) "If sediment escapes the site, accumulations must be removed at a frequency that minimizes off-site impacts, and prior to the next rain event, if feasible. If the permittee does not own or operate the off-site conveyance, then the permittee shall work with the owner or operator of the property to remove the sediment." Well one week went by and nothing happened. They continued to work as if nothing had even happened. That's when I started making phone calls. When I called Erick Roberts, the contact on the SWPPP board for the Contractor, he was surprised to hear that there were any issues because their most recent inspection reports showed no issues. I've seen these reports and they do in fact state there was no sediment discharged off-site and all BMPs were in working order, which was not the case. Again, I was shocked because it was very obvious there was a massive discharge and silt fence was down in many locations and overtopped in others. In my 68 audits I never saw a discharge even close to what we experienced.

It took exactly one month before I could get in contact with anyone at the jobsite to look at the damages. We were told many times that they would "take care of it" and "get us fixed up," but to this day all that sediment is still there and the water that runs off their property is turbid and not clean like it was prior to construction. There was an attempt nearly 1.5 years after this large discharge of sediment to give us a monetary settlement so we could have the damages fixed ourselves. But attached to that settlement was an agreement they wanted us to sign that would have absolved the owner and Arch-Con of all liability related to construction. We have an email from Michael Vaughn, the Senior Vice President of Arch-Con stating they are "... waiting on the Substantial Completion Certificate so we can attach as part of the settlement to make sure [the Hicks ] can not come back to us or the [Owner] for construction related activities." We couldn't sign this document because there were many issues we were having with construction, unrelated to the sediment discharge issue.

Additionally, approximately 6 months after the discharge of sediment, I had made two complaints to TCEQ with two site visits confirming our complaints. These complaints are what lead to this enforcement case. Arch-Con and the owner were not happy about us making complaints so the Owner of the property pleaded with us to not make any more complaints and they promised that Arch-Con and the Owner would fix the sediment issues. In an attempt to be forgiving, we agreed and did not make any additional complaints for over a year even though I observed many violations.

Since Arch-Con and the Owner have still not followed through with their end of the deal, I'm going to use this time to go over all the violations I observed on their site. These are not an exhaustive list as I can only observe a portion of their site from our property.

- 1 Contact Information on “Primary Operator Notice” posted on the SWPPP board was not kept updated

Mr. Erick Roberts signed the NOI as the primary operator; however, sometime during late 2021 he was no longer employed at Arch-Con. This left me with no one to call regarding issues on-site as the on-site superintendent never answered my calls and no other contact information was given by Arch-Con and posted.

- 2 BMPs were installed improperly

- Silt fence was not properly installed in some areas and not properly maintained in many areas. Some of these were noted in TCEQ reports. Here is a photo taken on October 27, 2021 which shows soils worked up onto and over the silt fence rendering the silt fence ineffective.





- Rock check dams were installed with the middle of the dam higher than the sides, leading to erosion around the sides of the check dam (red circle) instead of water running through and over the dam.



### 3 No Stabilization

Arch-Con left disturbed areas for more than 14 days without initiating stabilization measures as required in Part III, Section F, 2. (b). The only stabilization measures I observed was hydroseeding once in the spring of 2022, months after work had permanently ceased in that area. After this date, earth disturbing activities continued in some portions of the site and no stabilization measures were used on those areas. This includes in drainage swales.

Drainage swales were regraded and worked on March 11, 2023 and below is a drone photo taken on March 16, 2023 showing no stabilization of the drainage swale (blue line denoting swale).





Below is another drone photo taken one month later on April 16, 2023 showing no stabilization of the same drainage swale (blue line). Additionally, the lack of stabilization was a significant contributor to the significant erosion of the side slopes of the drainage channel.



#### 4 Off-site Discharge of Sediment

I wanted to include some photos from the October 1, 2021 rain event while we were observing the sediment coming onto our property. The first photo is taken on our property and shows approximately 6-8 inches of silty sand sediment deposits. The tree that is shown near the fence line was a water oak, which has a shallow root system. This tree is now dead, along with one other water oak in the vicinity which all had significant amounts of sediment deposited over their roots. We believe these trees died due to the sediment deposited over their roots.



This next photo is taken from our property showing the sediment-laden water flowing onto our property.





The previous photos are significantly upstream from the pond, which had the largest accumulations of sediment. We did not get down to the pond that morning due to the dangers of the waters running through the property. We did see the aftermath of all the sediment, approximately 2-3 ft thick in that location. Here is a photo taken on October 27, 2021, nearly one month after the rain event. There is a large portion of the silt fence over capacitated and no evidence that the Contractor made any attempt to fix the fence or remove sediment. It shall be noted that our property is shown to the right of the fence line.



No attempt was made to remove off-site sediment from our property. I'm going to include an excerpt from the deposition (July 25<sup>th</sup>, 2024) of Mr. Michael Dovalina, designated representative of Arch-Con to speak on behalf of Arch-Con regarding the Stormwater issues in this case. Note that Mr. Bishop is our attorney and Mr. Garrett is Arch-Con's attorney.

*Q. (BY MR. BISHOP)· And has Arch-Con requested permission from Mr. Hicks, for instance, who's sitting over here, to come on the property and remove the sediment that was washed away onto the Hicks' property by the -- from the church property?*

*MR. GARRETT:· Objection.· Form.*

*[Mr. Dovalina] A.· Can you ask that one more time?*

*Q. (BY MR. BISHOP)· Yeah.· That's a good idea.· . . . .Mr. Hicks is right over here.· Are you asking Mr. Hicks if you can go on -- if Arch-Con can go on his property and remove the sediment that was washed away --*

MR. GARRETT:· Objection.· Form.

Q. (BY MR. BISHOP)· -- from the church property?

MR. GARRETT:· Same objection.

[Mr. Dovalina] A.· To the ex- -- I can't speak to if there was any sediment that was washed on their property.· We have asked to walk on the property to -- at their request to view the property, but we have not asked to go on their property to remove any sediment.

## 5 Inspection Reports

The Construction project started September 1, 2021 and final stabilization was achieved on July 21, 2023; however, inspection reports were only completed from 9/2/2021 to 8/31/2022. There was more than 10 months of time between the end of inspections and the achievement of final stabilization.

Additionally, inspection reports were either completed by an untrained individual who did not know how to spot maintenance issues properly or the individual lied on their inspection reports. For example, this inspection report, dated 10/6/2021, the most recent inspection report after the large discharge of sediment answered “yes” to “Is silt fence installed, maintained, and functioning as required?” Additionally, they answered “yes” to the question “Is sediment contained on-site?” These answers were so far from the truth, either it is a lie or this person had no idea what they were doing.

9)	Is silt fence installed, maintained and functioning, as required?	Yes
10)	Are mulch/gravel socks installed, maintained and functioning, as required?	Yes
11)	Are rock berms (if any) intact and in good condition?	Yes
12)	Are inlet basin protections installed, maintained and functioning, as required?	Yes
13)	Is the tree protection upright and working efficiently?	Yes
14)	Are natural resource area (e.g. streams, wetlands, water bodies, etc.) protections installed, maintained and functioning, as required?	Yes
15)	Are outfalls clean and free of evidence of erosion/sediment?	Yes
16)	Is sediment contained on-site?	Yes

In the inspection report dated 10/13/2021, the photo below is included in the report which shows our property on the left side of the photo. This photo shows the silt fence laid down



(red arrow) and sediment on our property (blue arrow). This report again says there are no issues with silt fence nor any off-site sediment discharge. The inclusion of this photo in their inspection report without any mention of the deficiency noted in the photo shows, in my opinion, they had unqualified personnel conducting inspections.

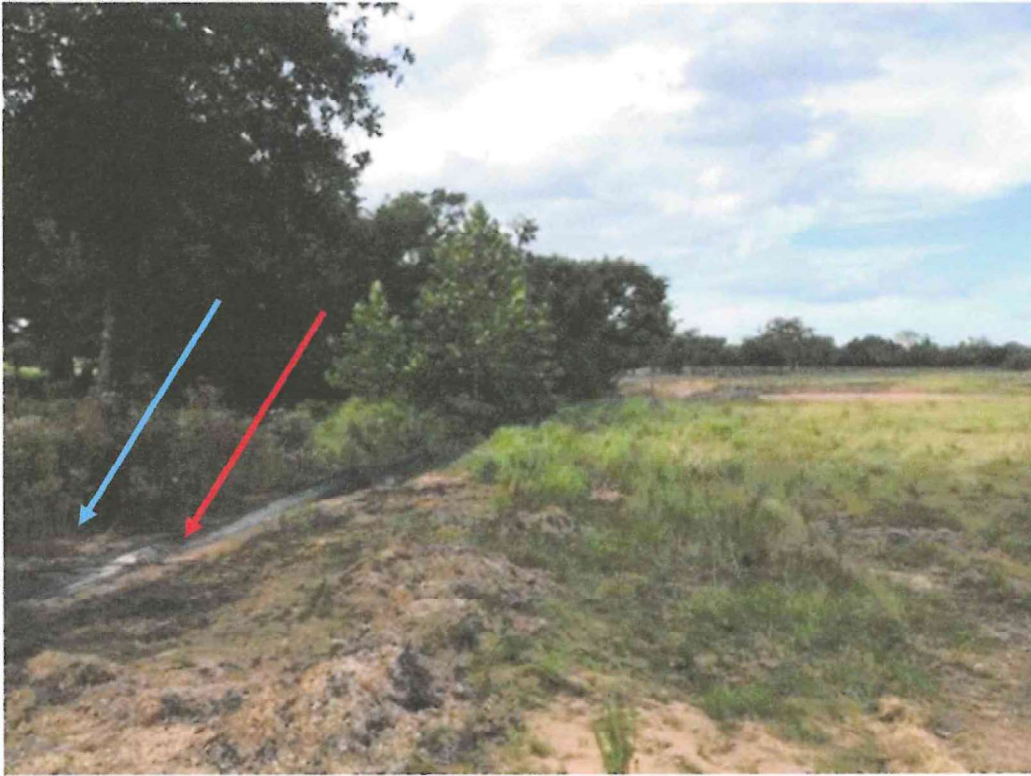


Photo captured: 10/13/2021

6 Dust was not controlled in violation of TPDES General Permit Part III, Section F, 4 (a)

Dust was a common occurrence on the Arch-Con site and prevailing winds do blow to our property. Below is an example of the amount of dust we would experience frequently during construction. Note that the dust is blowing towards our chickens (red circle). There were often days I wouldn't let my children play outside because of how bad the dust was blowing onto our property.





We did include in our request for production any proof that a water truck was on-site. I never saw one on-site and I did speak to the Superintendent about having one because the dust was so bad. He did say he would get one, but I never saw it nor did I see one being used. Our production request was met with objections.

*REQUEST NO. 14: All documents regarding water truck use on-site for the project that is the basis of this suit including but not limited to refilling log.*

*RESPONSE: Defendant objects that this discovery request is beyond the scope of discovery proscribed by TRCP 192.3(a). TEX. R. CIV. P. 192.3(a); see also Eli Lilly & Co. v. Marshall, 850 S.W.2d 155, 160, 36 Tex. Sup. Ct. J. 507 (Tex. 1993). This discovery request is not reasonably calculated to yield admissible evidence or to lead to the discovery of admissible evidence. This discovery request seeks documents that are not relevant to the claims and/or defenses asserted in this cause of action.*

*Defendant objects that this discovery request is overbroad in that it is not limited to documents related to the incident which makes the basis of this suit.*

*Defendant objects that this discovery request constitutes an impermissible fishing expedition as laid out by the Supreme Court in In re CSX Corp. See 124 S.W.3d 149, 153 (Tex. 2003). This request seeks documents that have no reasonable relationship to the subject matter of this suit.*

*Defendant objects the phrase “water truck use” is vague and ambiguous.*

*Subject to, and without waiving, the foregoing objections, Arch-Con will supplement*

Arch-Con has objected to nearly every deposition question, every interrogatory asked and nearly every document request. This of course further slows down the justice process as we seek to reach a resolution.

7 Tracking of Soil onto Road in violation of TPDES Construction General Permit Part III, Section F, 4 (a)

Tracking of soil onto FM 1736 was observed on numerous occasions. I do not have photographs to support this observation; however, we did include in our request for production any proof that a street sweeper truck was on-site. I never saw one on-site and I never saw the streets being swept. Again, our production request was met with objections.

*REQUEST NO. 15: All documents regarding street sweeper truck use on-site for the projects that are the basis of this suit including but not limited to sweeping frequency.*

*RESPONSE: Defendant objects that this discovery request is beyond the scope of discovery proscribed by TRCP 192.3(a). TEX. R. CIV. P. 192.3(a); see also Eli Lilly & Co. v. Marshall, 850 S.W.2d 155, 160, 36 Tex. Sup. Ct. J. 507 (Tex. 1993). This discovery request is not reasonably calculated to yield admissible evidence or to lead to the discovery of admissible evidence. This discovery request seeks documents that are not relevant to the claims and/or defenses asserted in this cause of action.*

*Defendant objects this this discovery request is overbroad in that it is not limited to documents related to the incident which makes the basis of this suit.*

*Defendant objects that this discovery request constitutes an impermissible fishing expedition as laid out by the Supreme Court in In re CSX Corp. See 124 S.W.3d 149, 153 (Tex. 2003). This request seeks documents that have no reasonable relationship*

to the subject matter of this suit.

Defendant objects the phrase "street sweeper truck use" is vague and ambiguous.

Subject to, and without waiving, the foregoing objections, Arch-Con will supplement.

8 Secondary Operator did not fulfil their obligations as required by the TPDES Construction General Permit

The owner and secondary operator of construction site is Saint Mary and Archangel Michael Coptic Orthodox Church. The contact and signer of the secondary operator notice was Father Younan William.

**LARGE CONSTRUCTION SITE NOTICE**  
FOR THE  
Texas Commission on Environmental Quality (TCEQ) Stormwater Program  
**TPDES GENERAL PERMIT TXR150000**  
**"SECONDARY OPERATOR" NOTICE**

This notice applies to secondary operators of construction sites operating under Part II.E.3 of the TPDES General Permit Number TXR150000 for discharges of stormwater runoff from construction sites equal to or greater than five acres, including the larger common plan of development. The information on this notice is required in Part III D.2. of the general permit. Additional information regarding the TCEQ stormwater permit program may be found on the Internet at: <http://www.tceq.texas.gov/permits/stormwater/construction>

Site-Specific TPDES Authorization Number:	TXR1518GM
Operator Name:	Saint Mary & Archangel Michael Coptic Orthodox Church
Contact Name and Phone Number:	Father Younan William - 832-731-1542
Project Description: Physical address or description of the site's location, and estimated start date and projected end date or date that disturbed soils will be stabilized.	The Good Shepherd Retreat (The Vineyard) 36488 FM 1716 Hempstead, TX 77445 Start Date: 08/16/2021 End Date: 02/12/2022
Location of Stormwater Pollution Prevention Plan:	On Site

For Large Construction Activities Authorized Under Part II.E.3, (Obtain Authorization to Discharge) the following certification must be completed:

I, Father Younan William, (Typed or Printed Name) hereby certify under penalty of law that I have read and understood the regulatory requirements for obtaining an authorization under Part II.E.3 of TPDES General Permit TXR150000 and agree to comply with the terms of this permit. A stormwater pollution prevention plan has been developed and will be implemented prior to construction, according to permit requirements. A copy of this signed notice is retained in the vicinity of the MS4 if discharges enter an MS4, and remains there until significant evidence for providing false information or for reducing unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

Signature and Title: [Signature] Date: 8/31/21  
Date Notice Received

We notified Father Younan William on November 5, 2021 via telephone of the large discharge of sediment, along with some other construction issues. He insisted Arch-Con would take care of the damages. I told him that we expected them to fulfill their obligations, as required by the permit and that if Arch-Con did not follow through with their promise, ultimately, we would hold the church responsible for the damages.

We did not hear from Father Younan William again. The next time we spoke to him was during his deposition in our lawsuit. Here is an excerpt from his deposition stating what the church did as the secondary permit holder. Note Mr. Smith is the attorney for the Church.

*Q· · I will rephrase that. When the Hicks complained about the problems -- the runoff, the settlement -- sediment, and so forth -- what demand did you make to have [Arch-Con] correct these problems?*

*MR. SMITH:· Objection, form.*

*MR. GARRETT:· Objection, form.*

*A[Father Younan William]· · They contact us as operat- -- as the owner to -- okay· They have a complaint and now we are the owner· They are neighbors· They wanted us to make sure that this is solved· But when it comes to who exactly should be working on this, this is, again, something we go back and we ask the contractor, as a primary ·operator, to fix it·*

So, even after we had issues with Arch-Con and they didn't fix any of the issues, the Church did not do anything to compel Arch-Con to follow through on their promises, nor ask us if our property had been cleaned up.

## 9 Temporary BMPs have not been removed

Final stabilization was achieved on July 21, 2023 but silt fence is still installed and not properly maintained. It is customary to remove temporary BMPs once final stabilization has been reached.

## 10 Arch-Con's other sites

According to the TCEQ website, Arch-Con is the operator for 225 construction sites in Texas. I've observed less than ideal practices at two of their construction sites in Washington County that I happen to drive by. One project, under permit #TXR1552EN, I observed large areas of the site unstabilized for more than 14 days. I drive by that site on a monthly basis and naturally noticed the lack of stabilization numerous times. Additionally, another construction site that is older and I could not find the permit number, I observed a sediment discharge off-site as well as the same issues regarding unstabilized soils for periods of time more than 14 days.

## In Conclusion

The amount of time I've had to devote to try to remedy these issues is absurd, and we're still not done. The manner in which they have treated us is despicable. Arch-Con is a \$500 million dollar company and the Church paid more than \$5 million for their project, but somehow, they couldn't find time or money to fix our damages in the last three years. It is



so frustrating and obviously very personal since this is our home, our parents' homes, our children's home, our farm business and our dream of living a peaceful country life.

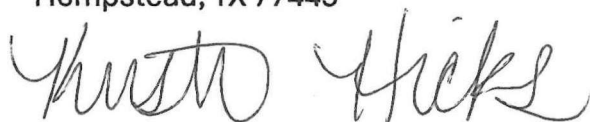
We've been forced, in our opinion, to file a lawsuit against both the Church and Arch-Con for the many issues we've had related to construction and this project. During discovery we have obtained their master plan for this project, which is going to consist of an estimated 3 more phases of construction, including 22 more buildings and a wastewater treatment plant. This is all proposed in a rural area with no similar developments in the area.

Based on these past three years we have no faith in the Owner's ability to hire competent help, hold them accountable and operate a wastewater treatment plant without issues. As the property that received most of their runoff, I can only assume we will be receiving their effluent from the wastewater treatment plant. After review of documents, we have discovered numerous design issues with their project further bolstering our doubt in their ability to complete this project without more issues. Is this what we have to do every few years after they start a new phase of construction? Are we going to sustain more damages? Will they fix them the next time or will we need to enter a costly and more importantly time-consuming lawsuit just to protect ourselves from their ambitions. I feel that with my background in Civil Engineering and my experience auditing construction sites, I couldn't be better equipped to fight this battle. However, it has been brutal; the stress, the worry, the unknowns, the awful things said about us by their lawyers, it's so emotionally, mentally and physically exhausting. This is not how I want to spend my time.

I can't help but think how many people were in our situation with Arch-Con and didn't know what I know and didn't have the tools to fight, or didn't know who to call to submit a complaint. How many others were coerced into signing an abomination of a settlement agreement? These violations, these discharges, they affect people, real people who don't deserve it, people who just want to go about their life and not be pushed around by developers cutting corners because they want to make a little extra money and get the job done faster. I implore the TCEQ to hold Arch-Con and Saint Mary and Archangel Michael Coptic Orthodox Church accountable to the fullest extent of the law. I further implore the TCEQ to inspect at least 10% of the Arch-Con permitted sites out of the 225 in various stages of construction.

Thank you,

Kristi Hicks, PhD  
36640 FM 1736 Rd  
Hempstead, TX 77445

A handwritten signature in cursive script that reads "Kristi Hicks". The ink is dark and the signature is fluid, with the first and last names being more prominent than the middle name.

# TCEQ Interoffice Memorandum

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**To:** Commissioners

**Thru:** *gy* Gitanjali Yadav, Deputy Director, Litigation Division

*JSR* Jess Robinson, Senior Attorney, Litigation Division

**From:** William Hogan, Staff Attorney, Litigation Division

**Date:** September 27, 2024

**Subject:** Response to Comment Received Concerning Proposed Default Enforcement Order  
Arch-Con Corporation  
Waller County; RN111329280; Enforcement Case No. 62149  
Docket No. 2022-0374-WQ-E

In response to a publication in the *Texas Register* on August 16, 2024, the Litigation Division received one public comment regarding a proposed default enforcement order requiring payment of an administrative penalty and the performance of certain actions by Arch-Con Corporation. The comment was received within the comment period.

The proposed default order includes two violations documented during an onsite complaint investigation at a construction site, conducted on February 16, 2022. The violations addressed in the proposed order include:

- 1) Failure to maintain best management practices (BMPs) in effective operating condition, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR1518GM, Part III, Section F.6.(a). Specifically, silt fencing along the western perimeter of the Site was undercut, over-capacitated, and fallen over; and
- 2) Failure to remove accumulations of sediment at a frequency that minimizes offsite impacts, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR1518GM, Part III, Section F.6.(d). Specifically, sediment had escaped offsite and onto the adjacent property and had not been removed.

The proposed default order assesses a penalty in the amount of \$4,725, identifies the violations, orders the performance of corrective actions, and recognizes that compliance has been achieved for the first violation, because of Respondent achieving final stabilization at the Site, as of July 21, 2023.

The public comment does not express opposition to entry of the proposed default order. Instead of providing support or opposition, it provides additional information relevant to the issues addressed in the order, and it requests that TCEQ hold the order's respondent and a related party accountable for violations at the Site. Issues from the public comment are recited and addressed below:

- Comment – “On this rainy morning, the neighbors had no functioning sedimentation basin and only one row of silt fence protecting our property from their project. We watched in horror as a veritable river of dirty water flowed onto our property dumping an estimated 400 cubic yards of sediment in several locations, including several feet thick into our drainage swale, and filling in our only pond on the property. To say I was horrified is an understatement.”

*Response – The Executive Director appreciates this comment and the effects that can befall a property adjacent to a construction site, especially when stormwater associated with those activities is not controlled with best management practices, and when discharges of the stormwater and sediment cause offsite impacts. The scope*



*of the subject enforcement action, and the remedies provided in the proposed default order, are targeted to address the respondent's failures and violations of governing permit provisions and TCEQ rule.*

- Comment – Respondent committed several violations in addition to those addressed in the proposed order, including:
  - a. Not updating contact information for the site's Primary Operator on the Site's notice sign;
  - b. Other best management practices or structural controls were not installed correctly, including: rock check dams had edges at heights lower than their centers, leading to erosion; and acreage was sometimes not stabilized until more than 14 days after having been disturbed;
  - c. Operator inspection reports were either missing for periods of time or contained inaccurate information;
  - d. Dust was not controlled and prevented from being blown around;
  - e. Soil was tracked onto a nearby road; and
  - f. Temporary best management practices have not been removed since final stabilization was achieved.

*Response – As documented in TCEQ Investigation Report No. 1794715, the complaint that triggered this enforcement action alleged inadequate best management practices and sediment discharge. Both of these allegations were substantiated by the investigator, and they are reflected in the violations included in the Default Order.*

- Comment – “I implore the TCEQ to hold Arch-Con and Saint Mary and Archangel Michael Coptic Orthodox Church accountable to the fullest extent of the law.”

*Response – The Default Order imposes payment of an administrative penalty and the performance of corrective actions, which are consistent with what TCEQ is authorized by the Texas Water Code to provide. This penalty amount complies with statutory requirements under Tex. Water Code § 7.053, as implemented by TCEQ's Penalty Policy. The extent of corrective actions ordered also complies with TCEQ's authority under Tex. Water Code § 7.073 to order actions necessary to correct noncompliance. Because Respondent Arch-Con Corporation is the permitted entity responsible for compliance with applicable permit conditions at the Site, the Executive Director determined it appropriate to enforce against Arch-Con Corporation alone.*

A copy of the comments and the staff response to comments are attached for your consideration. In summary, the commenter expresses the hardship she has experienced as the victim of the violations at issue, and her desire that Respondent be penalized to the fullest extent of the law. Staff's position, as reflected in the response, is to express sympathy for the commenter's experience, and to assure her that the Default Order penalizes Respondent for the observed violations to the fullest extent permitted by applicable law and policy. Accordingly, the Litigation Division recommends that you adopt this proposed order.

## **Attachments**

cc: Westin Massey, Water Section Manager, Houston Regional Office  
Harley Hobson, Enforcement Coordinator, Enforcement Division

Jon Niermann, *Chairman*  
Bobby Janecka, *Commissioner*  
Caterina R. Gonzalez, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 27, 2024

Kristi Hicks, PhD  
36640 FM 1736 Rd  
Hempstead, TX 77445

Re: Comment Received, Proposed Default Enforcement Order – Arch-Con Corporation  
RN111329280; Enforcement Case No. 62149  
Docket No. 2022-0374-WQ-E

Dr. Hicks:

On September 9, 2024, we received your comment concerning the proposed default order for Arch-Con Corporation. I have forwarded your comment to our Houston Regional Office for their information and to our General Counsel's Office so that the Commissioners can consider your comments regarding the proposed order.

Texas Commission on Environmental Quality (TCEQ) staff filed the Executive Director's Preliminary Report and Petition against Arch-Con Corporation on December 1, 2023, and Arch-Con Corporation failed to file an answer or agree to terms of settlement within the required time. Accordingly, the Executive Director proposes the Commission issue a default order that assesses an administrative penalty of \$4,725 against Arch-Con Corporation and imposes certain technical requirements, or corrective actions.

The proposed default order includes two violations documented during an on-site complaint investigation, conducted on February 16, 2022. The violations addressed in the proposed order include:

- 1) Failure to maintain best management practices (BMPs) in effective operating condition, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR1518GM, Part III, Section F.6.(a). Specifically, silt fencing along the western perimeter of the Site was undercut, over-capacitated, and fallen over; and
- 2) Failure to remove accumulations of sediment at a frequency that minimizes off-site impacts, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR1518GM, Part III, Section F.6.(d). Specifically, sediment had escaped off-site and onto the adjacent property and had not been removed.

The proposed default order assesses a penalty in the amount of \$4,725, identifies the violations, and recognizes partial compliance has been achieved. Some of your received comments are not limited to the provisions of the proposed order addressing the violations. No changes to the proposed default order were made in response to the comments. A summary of the comments and the staff response to the comments are provided below:

- Comment - "On this rainy morning, the neighbors had no functioning sedimentation basin and only one row of silt fence protecting our property from their project. We watched in horror as a veritable river of dirty water flowed onto our property dumping an estimated 400 cubic yards of sediment in several locations, including several feet thick into our drainage swale, and filling in our only pond on the property. To say I was horrified is an understatement."

*Response - The Executive Director appreciates this comment and the effects that can befall a property adjacent to a construction site, especially when stormwater associated with those activities is not controlled with best management practices, and when discharges of the stormwater and sediment cause offsite impacts. The scope of the subject enforcement action, and the remedies provided in the proposed default order, are targeted to address the respondent's failures and violations of governing permit provisions and state law.*

- Comment - Respondent committed several violations in addition to those addressed in the proposed order, including:
  - a. Not updating contact information for the site's Primary Operator on the site's notice sign;
  - b. Other best management practices or structural controls were not installed correctly, including: rock check dams had edges at heights lower than their centers, leading to erosion; and acreage was sometimes not stabilized until more than 14 days after having been disturbed;
  - c. Operator inspection reports were either missing for periods of time or contained inaccurate information;
  - d. Dust was not controlled and prevented from being blown around;
  - e. Soil was tracked onto a nearby road; and
  - f. Temporary best management practices have not been removed since final stabilization was achieved.

*Response - As documented in TCEQ Investigation Report No. 1794715, the complaint that triggered this enforcement action alleged inadequate best management practices and sediment discharge. Both of these allegations were substantiated by the investigator, and they are reflected in the violations included in the Default Order.*

- Comment - "I implore the TCEQ to hold Arch-Con and Saint Mary and Archangel Michael Coptic Orthodox Church accountable to the fullest extent of the law."

*Response - The Default Order imposes payment of an administrative penalty and the performance of corrective actions, which are consistent with what TCEQ is authorized by the Texas Water Code to provide. This penalty amount complies with statutory requirements under Tex. Water Code § 7.053, as implemented by TCEQ's Penalty Policy. The extent of corrective actions ordered also complies with TCEQ's authority under Tex. Water Code § 7.073 to order actions necessary to correct noncompliance. Because Respondent Arch-Con Corporation is the permitted entity responsible for compliance with applicable permit conditions at the Site, the Executive Director determined it appropriate to enforce against Arch-Con Corporation alone.*

We are sympathetic to the harm you and your family have suffered as a result of these violations, and we appreciate your input into the enforcement action currently pending against Arch-Con Corporation. The proposed default order will be considered at an upcoming Commissioner's Agenda. William Hogan is the Staff Attorney assigned to this case. If you have further concerns or comments related to this order, please contact Mr. Hogan at (512) 239-3400. For complaints related to the current operating conditions or procedures of Arch-Con Corporation, you should contact our Houston Regional Office at (713) 767-3500.

Thank you,



Gitanjali Yadav, Deputy Director  
Litigation Division  
Texas Commission on Environmental Quality

cc: Westin Massey, Water Section Manager, Houston Regional Office

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 62149  
ARCH-CON CORPORATION  
RN111329280  
Docket No. 2022-0374-WQ-E

Page 1 of 2

**Order Type:**  
Default Order

**Media:**  
WQ

**Small Business:**  
Yes

**Location Where Violations Occurred:**  
36488 Farm-to-Market Road 1736, Hempstead, Waller County (the “Site”)

**Type of Operation:**  
construction site

**Other Significant Matters:**  
Additional Pending Enforcement Actions: None  
Past-Due Penalties: None  
Past-Due Fees: None  
Other: None  
Interested Third Parties: None

**Texas Register Publication Date:** August 16, 2024

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$4,725

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

**Total Due to General Revenue:** \$4,725

**Compliance History Classifications:**  
Person/CN – UNCLASSIFIED  
Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** January 28, 2021

**Investigation Information**

**Complaint Date(s):** February 1, 2022  
*Complaint Information:* The complainant alleges inadequate BMPs and sediment discharge.

**Date of Investigation:** February 16, 2022

**Date of NOV:** November 30, 2021

**Date of NOE:** March 21, 2022

**Violation Information**

1. Failed to maintain best management practices (“BMPs”) in effective operating condition [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System (“TPDES”) General Permit No. TXR1518GM, Part III, Section F.6.(a)].
2. Failed to remove accumulations of sediment at a frequency that minimizes off-site impacts [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR1518GM, Part III, Section F.6.(d)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

Respondent achieved final stabilization at the Site, including installation of vegetative cover and reduction of the area of disturbed soil to less than one acre, as of July 21, 2023.

**Technical Requirements:**

1. Within 30 days remove the accumulation of sediment that had escaped off-site and onto the adjacent property by agreement with the owner of the adjacent property.
2. Within 45 days submit written certification to demonstrate compliance with Technical Requirement No. 1.

**Litigation Information**

**Date Petitions Filed:** December 1, 2023

**Date of Service:** December 6, 2023

**Date Answer Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** William Hogan, Litigation Division, (512) 239-3400  
Sheldon Wayne, Public Interest Counsel, (512) 239-6363

**TCEQ Litigation Agenda Coordinator:** Katherine McKenzie, Litigation Division, (512) 239-2575

**TCEQ Enforcement Coordinator:** Harley Hobson, Enforcement Division, (512) 239-1337

**TCEQ Regional Contact:** Westin Massey, Houston Regional Office, (713) 767-3500

**Respondent Contact:** Jason Cooper, President, ARCH-CON CORPORATION, 190 T C Jester Boulevard,  
Suite 200, Houston, Texas 77007-4705

**Respondent's Attorney:** Chris Scheurich, Counsel, ARCH-CON CORPORATION, 190 T C Jester  
Boulevard, Suite 200, Houston, Texas 77007-4705





# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	28-Mar-2022	<b>Screening</b>	28-Mar-2022	<b>EPA Due</b>	
	<b>PCW</b>	1-Dec-2022				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	ARCH-CON CORPORATION
<b>Reg. Ent. Ref. No.</b>	RN111329280
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	62149	<b>No. of Violations</b>	2
<b>Docket No.</b>	2022-0374-WQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Alejandro Laje
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$4,500
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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>	5.0%	<b>Adjustment</b>	<b>Subtotals 2, 3, &amp; 7</b>	\$225
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<b>Notes</b>	Enhancement for one NOV with the same or similar violations as those in the current enforcement action.
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<b>Culpability</b>	No	0.0%	<b>Enhancement</b>	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0%	<b>Enhancement*</b>	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$866	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$15,000	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,725
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$4,725
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,725
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<b>DEFERRAL</b>	0.0%	<b>Reduction</b>	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$4,725
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<b>Screening Date</b>	28-Mar-2022	<b>Docket No.</b>	2022-0374-WQ-E	<b>PCW</b>
<b>Respondent</b>	ARCH-CON CORPORATION			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	62149			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN111329280			
<b>Media</b>	Water Quality			
<b>Enf. Coordinator</b>	Alejandro Laje			

## Compliance History Worksheet

### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

### >> Repeat Violator (Subtotal 3)

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**

Enhancement for one NOV with the same or similar violations as those in the current enforcement action.

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

### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 5%

<b>Screening Date</b> 28-Mar-2022 <b>Respondent</b> ARCH-CON CORPORATION <b>Case ID No.</b> 62149 <b>Reg. Ent. Reference No.</b> RN111329280 <b>Media</b> Water Quality <b>Enf. Coordinator</b> Alejandro Laje	<b>Docket No.</b> 2022-0374-WQ-E  <div style="text-align: right;"> <i>Policy Revision 5 (January 28, 2021)</i>  <i>PCW Revision February 11, 2021</i> </div>	<b>PCW</b>
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<b>Violation Number</b>	1	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR1518GM, Part III, Section F.6.(a)	
<b>Violation Description</b>	Failed to maintain best management practices ("BMPs") in effective operating condition. Specifically, silt fencing along the western perimeter of the Site was undercut, over capacitated, and fallen over.	

<b>Base Penalty</b>	\$25,000
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**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input style="width: 50px;" type="text" value="3.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	X	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input style="width: 50px;" type="text" value="0.0%"/>

Matrix Notes	Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.
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<b>Adjustment</b>	\$24,250
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	\$750
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**Violation Events**

Number of Violation Events	1	40	Number of violation days
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	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input style="width: 100px;" type="text" value="\$750"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	X	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	

One quarterly event is recommended.

**Good Faith Efforts to Comply**

<b>0.0%</b>	<b>Reduction</b>
	\$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	X	<input type="text"/>	

Notes	The Respondent does not meet the good faith criteria for this violation.
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<b>Violation Subtotal</b>	\$750
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**Economic Benefit (EB) for this violation**

<b>Estimated EB Amount</b>	\$355
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**Statutory Limit Test**

<b>Violation Final Penalty Total</b>	\$788
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<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$788
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# Economic Benefit Worksheet

**Respondent** ARCH-CON CORPORATION  
**Case ID No.** 62149  
**Reg. Ent. Reference No.** RN111329280  
**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	\$5,000	16-Feb-2022	21-Feb-2023	1.01	\$17	\$338	\$355
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

Estimated delayed Engineering/Construction cost to maintain BMPs in effective operating condition, including repairing/replacing the undercut, over capacitated, and fallen over silt fencing along the western perimeter of the Site. Date Required is the investigation date, and the Final Date is the estimated date of compliance.

## Avoided Costs

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

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

### Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$355

<b>Screening Date</b>	28-Mar-2022	<b>Docket No.</b>	2022-0374-WQ-E	<b>PCW</b>
<b>Respondent</b>	ARCH-CON CORPORATION	<i>Policy Revision 5 (January 28, 2021)</i>		
<b>Case ID No.</b>	62149	<i>PCW Revision February 11, 2021</i>		
<b>Reg. Ent. Reference No.</b>	RN111329280			
<b>Media</b>	Water Quality			
<b>Enf. Coordinator</b>	Alejandro Laje			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXR1518GM, Part III, Section F.6.(d)			
<b>Violation Description</b>	Failed to remove accumulations of sediment at a frequency that minimizes off-site impacts. Specifically, sediment had escaped off-site and onto the adjacent property and had not been removed.			
		<b>Base Penalty</b>	\$25,000	

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Release</b>	<b>Harm</b>		
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					<b>Percent</b> <input type="text" value="15.0%"/>

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					<b>Percent</b> <input type="text" value="0.0%"/>

<b>Matrix Notes</b>	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.
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<b>Adjustment</b>	<input type="text" value="\$21,250"/>
<input type="text" value="\$3,750"/>	

**Violation Events**

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="40"/>	Number of violation days
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	daily	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	weekly	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	monthly	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	quarterly	<input checked="" type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	semiannual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	annual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	single event	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

<b>Violation Base Penalty</b>	<input type="text" value="\$3,750"/>
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One quarterly event is recommended, calculated from the investigation date (February 16, 2022) to the screening date (March 28, 2022).

**Good Faith Efforts to Comply**

	<b>0.0%</b>		<b>Reduction</b>	<input type="text" value="\$0"/>
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="text"/>	<input type="text"/>		
Notes	The Respondent does not meet the good faith criteria for this violation.			

<b>Violation Subtotal</b>	<input type="text" value="\$3,750"/>
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**Economic Benefit (EB) for this violation**

<b>Estimated EB Amount</b>	<input type="text" value="\$253"/>	<b>Statutory Limit Test</b>	
		<b>Violation Final Penalty Total</b>	<input type="text" value="\$3,938"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$3,938"/>

# Economic Benefit Worksheet

**Respondent** ARCH-CON CORPORATION  
**Case ID No.** 62149  
**Reg. Ent. Reference No.** RN111329280  
**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	\$5,000	16-Feb-2022	21-Feb-2023	1.01	\$253	n/a	\$253
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

### Notes for DELAYED costs

Estimated delayed Remediation/Disposal cost to remove the accumulation sediment that had escaped off-site and onto the adjacent property. Date Required is the investigation date, and the Final Date is the estimated date of compliance.

## Avoided Costs

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

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

### Notes for AVOIDED costs

### Approx. Cost of Compliance

\$5,000

### TOTAL

\$253





# Compliance History Report

Compliance History Report for CN602562779, RN111329280, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

**Customer, Respondent, or Owner/Operator:** CN602562779, ARCH-CON CORPORATION **Classification:** UNCLASSIFIED **Rating:** -----

**Regulated Entity:** RN111329280, THE GOOD SHEPHERD RETREAT THE VINEYARD **Classification:** NOT APPLICABLE **Rating:** N/A

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

**CH Group:** 14 - Other

**Location:** 36488 Farm-to-Market Road 1736 in Hempstead, Waller County, Texas

**TCEQ Region:** REGION 12 - HOUSTON

**ID Number(s):**  
STORMWATER PERMIT TXR1518GM

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

**Date Compliance History Report Prepared:** March 28, 2022

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** March 28, 2017 to March 28, 2022

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**  
**Name:** Alejandro Laje **Phone:** (512) 239-2547

## Site and Owner/Operator History:

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

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

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

N/A

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

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

N/A

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

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

- |   |              |   |           |                          |
|---|--------------|---|-----------|--------------------------|
| 1 | Date:        | 11/30/2021  | (1771385) |                          |
|   | Self Report? | NO  |           | Classification: Moderate |
|   | Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)<br>TXR150000 CGP PERMIT |           |                          |
|   | Description: | Failure to maintain BMPs in an effective operating condition.         |           |                          |

### **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

**Component Appendices**

**Appendix A**

**All NOVs Issued During Component Period 3/28/2017 and 3/28/2022**

1	Date:	11/30/2021	(1771385)		
	Self Report?	NO		Classification:	Moderate
	Citation:				
		30 TAC Chapter 281, SubChapter A 281.25(a)(4)			
		TXR150000 CGP PERMIT			
	Description:	Failure to maintain BMPs in an effective operating condition.			

\* NOVs applicable for the Compliance History rating period 9/1/2016 to 8/31/2021

**Appendix B**

**All Investigations Conducted During Component Period March 28, 2017 and March 28, 2022**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ARCH-CON CORPORATION;  
RN111329280

§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## DEFAULT ORDER

DOCKET NO. 2022-0374-WQ-E

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is ARCH-CON CORPORATION ("Respondent").

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

### FINDINGS OF FACT

1. Respondent operated a construction site located at 36488 Farm-to-Market Road 1736 in Hempstead, Waller 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. During an investigation conducted on February 16, 2022, an investigator documented that Respondent:
  - a. Failed to maintain best management practices ("BMPs") in effective operating condition. Specifically, silt fencing along the western perimeter of the Site was undercut, over-capacitated, and fallen over; and
  - b. Failed to remove accumulations of sediment at a frequency that minimizes off-site impacts. Specifically, sediment had escaped off-site and onto the adjacent property and had not been removed.
3. The Executive Director recognizes that Respondent achieved final stabilization at the Site, including installation of vegetative cover and reduction of the area of disturbed soil to less than one acre, as of July 21, 2023.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of ARCH-CON CORPORATION" (the "EDPRP") in the TCEQ Chief Clerk's office on December 1, 2023.
5. By letter dated December 1, 2023, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on December 6, 2023, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to maintain BMPs in effective operating condition, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR1518GM, Part III, Section F.6.(a).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to remove accumulations of sediment at a frequency that minimizes off-site impacts, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXR1518GM, Part III, Section F.6.(d).
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
5. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of \$4,725 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of \$4,725 for violations of state statutes and rules of the TCEQ. The payment of this penalty and 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 which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: ARCH-CON CORPORATION; Docket No. 2022-0374-WQ-E" to:

Financial Administration Division  
Revenue Operations Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
  - a. Within 30 days of the effective date of this Order, remove the accumulation of sediment that had escaped off-site and onto the adjacent property by agreement with the owner of the adjacent property; and

- b. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by 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 fine and imprisonment for knowing violations.”

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

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

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. 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.
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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until 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. If 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

9. 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.
10. 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.
11. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E   P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

\_\_\_\_\_  
Date

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## UNSWORN DECLARATION OF WILLIAM HOGAN

"On behalf of the Executive Director of the Texas Commission on Environmental Quality, the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of ARCH-CON CORPORATION' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 1, 2023.

By letter dated December 1, 2023, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on December 6, 2023, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

"My name is William Hogan, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,  
State of Texas,  
on the 30th day of July, 2024

A handwritten signature in black ink that reads "William Hogan". The signature is written in a cursive style with a horizontal line underneath.

Declarant