

Executive Summary – Enforcement Matter – Case No. 62637
KELLEY SAND AND EXCAVATION, INC.
RN102609328
Docket No. 2022-0877-WQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

Cement Batcher CBFS0004, 10000 Farm-to-Market Road 2071, Valley View, Cooke County

Type of Operation:

Ready-mixed concrete plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 14, 2022

Comments Received: No

Penalty Information

Total Penalty Assessed: \$12,602

Amount Deferred for Expedited Settlement: \$2,520

Total Paid to General Revenue: \$10,082

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: June 7, 2022

Date(s) of NOE(s): July 8, 2022

**Executive Summary – Enforcement Matter – Case No. 62637
KELLEY SAND AND EXCAVATION, INC.
RN102609328
Docket No. 2022-0877-WQ-E**

Violation Information

Failed to maintain authorization to discharge facility wastewater and stormwater associated with industrial activities from ready-mixed concrete plants, concrete products plants, and the associated facilities. Specifically, authorization under Texas Pollutant Discharge Elimination System General Permit No. TXG112807 expired on February 5, 2022, and the Respondent continued to operate [30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121(a)(1), and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent no longer owns or operates the Facility as of July 1, 2022.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Laura Draper, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3012; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Clinton R. Kelley, President, KELLEY SAND AND EXCAVATION, INC., 10000 Farm-to-Market Road 2071, Valley View, Texas 76272
Stacey Kelley, Vice President, KELLEY SAND AND EXCAVATION, INC., 10000 Farm-to-Market Road 2071, Valley View, Texas 76272

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	11-Jul-2022	Screening	15-Jul-2022	EPA Due	
	PCW	18-Jul-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	KELLEY SAND AND EXCAVATION, INC.
Reg. Ent. Ref. No.	RN102609328
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	62637	No. of Violations	1
Docket No.	2022-0877-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Laura Draper
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
---	-------------------	----------

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
---------------------------	------	------------	--------------------------------	-----

Notes: No adjustment for Compliance History.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
--------------------	----	------	-------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
-------------------------	------	--------------	-------------------	-----

Total EB Amounts: \$102
 Estimated Cost of Compliance: \$100
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$12,500
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.8%	Adjustment	\$102
---	------	------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost associated with the violation.

Final Penalty Amount	\$12,602
-----------------------------	----------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$12,602
-----------------------------------	-------------------------------	----------

DEFERRAL	20.0%	Reduction	Adjustment	-\$2,520
-----------------	-------	-----------	------------	----------

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$10,082
------------------------	----------

Screening Date 15-Jul-2022

Docket No. 2022-0877-WQ-E

PCW

Respondent KELLEY SAND AND EXCAVATION, INC.

Policy Revision 5 (January 28, 2021)

Case ID No. 62637

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102609328

Media Water Quality

Enf. Coordinator Laura Draper

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

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 15-Jul-2022 **Docket No.** 2022-0877-WQ-E **PCW**
Respondent KELLEY SAND AND EXCAVATION, INC. *Policy Revision 5 (January 28, 2021)*
Case ID No. 62637 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102609328
Media Water Quality
Enf. Coordinator Laura Draper

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), Tex. Water Code § 26.121(a)(1), and 40 Code of Federal Regulations § 122.26(c)

Violation Description Failed to maintain authorization to discharge facility wastewater and stormwater associated with industrial activities from ready-mixed concrete plants, concrete products plants, and their associated facilities. Specifically, authorization under Texas Pollutant Discharge Elimination System General Permit No. TXG112807 expired on February 5, 2022, and the Respondent continued to operate.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

100% of the rule requirements were not met.

Adjustment \$22,500

\$2,500

Violation Events

Number of Violation Events 5 Number of violation days 146

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$12,500

Five monthly events are recommended from the date the permit authorization expired (February 5, 2022) to the date the Facility was sold (July 1, 2022).

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 \$12,500

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

Estimated EB Amount \$102 **Violation Final Penalty Total** \$12,602

This violation Final Assessed Penalty (adjusted for limits) \$12,602

Economic Benefit Worksheet

Respondent KELLEY SAND AND EXCAVATION, INC.
Case ID No. 62637
Reg. Ent. Reference No. RN102609328
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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

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

Avoided 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)	\$100	5-Feb-2022	1-Jul-2022	0.40	\$2	\$100	\$102
Notes for AVOIDED costs Actual avoided cost to submit a Notice of Intent through the State of Texas Environmental Electronic Reporting System and obtain authorization under TPDES General Permit No. TXG110000. Date required is the prior permit authorization expiration date. Final date is the date the Facility was sold.							

Approx. Cost of Compliance	\$100	TOTAL	\$102
-----------------------------------	-------	--------------	-------

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 CN603308982, RN102609328, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator:	CN603308982, KELLEY SAND AND EXCAVATION, INC.	Classification: UNCLASSIFIED	Rating: -----
Regulated Entity:	RN102609328, CEMENT BATCHER CBFS0004	Classification: UNCLASSIFIED	Rating: -----
Complexity Points:	2	Repeat Violator:	NO
CH Group:	10 - Cement and Concrete Product Manufacturing		
Location:	10000 Farm-to-Market Road 2071, Valley View, Cooke County, Texas		
TCEQ Region:	REGION 04 - DFW METROPLEX		
ID Number(s):			
AIR NEW SOURCE PERMITS ACCOUNT NUMBER CV0154K	AIR NEW SOURCE PERMITS AFS NUM 4809700020		
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 78551	WASTEWATER PERMIT TXG113186		
AIR EMISSIONS INVENTORY ACCOUNT NUMBER CV0154K			
Compliance History Period:	September 01, 2016 to August 31, 2021	Rating Year: 2021	Rating Date: 09/01/2021
Date Compliance History Report Prepared:	July 20, 2022		
Agency Decision Requiring Compliance History:	Enforcement		
Component Period Selected:	July 13, 2017 to July 13, 2022		
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.			
Name:	Laura Draper	Phone:	(512) 239-4177

Site and Owner/Operator History:

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

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

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

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

N/A

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

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

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KELLEY SAND AND
EXCAVATION, INC.
RN102609328

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2022-0877-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 KELLEY SAND AND EXCAVATION, INC. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a ready-mixed concrete plant located at 10000 Farm-to-Market Road 2071 in Valley View, Cooke County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$12,602 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$10,082 of the penalty and \$2,520 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or

required in this action, are waived in the interest of a more timely resolution of the matter.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that the Respondent no longer owns or operates the Facility as of July 1, 2022.

II. ALLEGATIONS

During an investigation conducted at the Facility on June 7, 2022, an investigator documented that the Respondent failed to maintain authorization to discharge facility wastewater and stormwater associated with industrial activities from ready-mixed concrete plants, concrete products plants, and the associated facilities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TEX. WATER CODE § 26.121(a)(1), and 40 CODE OF FEDERAL REGULATIONS § 122.26(c). Specifically, authorization under Texas Pollutant Discharge Elimination System General Permit No. TXG112807 expired on February 5, 2022, and the Respondent continued to operate.

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: KELLEY SAND AND EXCAVATION, INC., Docket No. 2022-0877-WQ-E" to:

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


2. All relief not expressly granted in this Order is denied.

3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
7. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date

1/13/2023

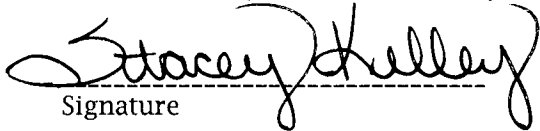
Date

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 OAG 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 OAG of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

9/16/2022

Date

Stacey Kelley

Name (Printed or typed)

Vice President

Title

Authorized Representative of
KELLEY SAND AND EXCAVATION, INC.

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

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