

Executive Summary – Enforcement Matter – Case No. 63239

WJH LLC

RN111332771

Docket No. 2022-1433-WQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Cedar Point Subdivision, located approximately 2000 feet west from the intersection of U.S. Highway 190 and Cedar Point, Livingston, Polk County

Type of Operation:

Construction sites

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: February 16, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$11,250

Amount Deferred for Expedited Settlement: \$2,250

Total Paid to General Revenue: \$9,000

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): August 18, 2022

Complaint Information: Alleged that homes were being built with soil erosion flowing into the creeks and heading to a lake.

Date(s) of Investigation: August 29, 2022

Date(s) of NOE(s): October 4, 2022

Executive Summary – Enforcement Matter – Case No. 63239

WJH LLC

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Docket No. 2022-1433-WQ-E

Violation Information

Failed to install and maintain best management practices at the Site which resulted in a discharge of pollutants into or adjacent to any water in the state. Specifically, the silt fencing was broken which allowed soil to leave the Site and go into roadside ditches and caused blockages in the culverts [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and Texas Pollutant Discharge Elimination System General Permit No. TXR1528GN, Part III, Section G.1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

- a. By October 14, 2022, laid down sod to reach final stabilization; and
- b. By October 14, 2022, removed and properly disposed of the soil from the roadside ditches and culverts.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

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

Respondent: Dale Francescon, Chief Executive Officer, WJH LLC, 8390 East Crescent Parkway, Suite 650, Greenwood Village, Colorado 80111

Justin McCombs, Vice President of Construction, WJH LLC, 8390 East Crescent Parkway, Suite 650, Greenwood Village, Colorado 80111

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	11-Oct-2022			
	PCW	12-Oct-2022	Screening	12-Oct-2022	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	WJH LLC				
Reg. Ent. Ref. No.	RN111332771				
Facility/Site Region	10-Beaumont		Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	63239	No. of Violations	1
Docket No.	2022-1433-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Harley Hobson
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment to Compliance History.			
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.				
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$1,250
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$28	<i>*Capped at the Total EB \$ Amount</i>
Estimated Cost of Compliance	\$3,300	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$11,250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,250
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,250
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$9,000
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Screening Date12-Oct-2022

RespondentWJH LLC

Case ID No.63239

Reg. Ent. Reference No.RN111332771

MediaWater Quality

Enf. CoordinatorHarley Hobson

Docket No.2022-1433-WQ-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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)

Satisfactory Performer

Adjustment Percentage (Subtotal 7)0%

>> Compliance History Summary

Compliance History Notes

No adjustment to 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	12-Oct-2022	Docket No.	2022-1433-WQ-E	PCW
Respondent	WJH LLC	<i>Policy Revision 5 (January 28, 2021)</i>		
Case ID No.	63239	<i>PCW Revision February 11, 2021</i>		
Reg. Ent. Reference No.	RN111332771			
Media	Water Quality			
Enf. Coordinator	Harley Hobson			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a), and Texas Pollutant Discharge Elimination System General Permit No. TXR1528GN, Part III, Section G.1			
Violation Description	Failed to install and maintain best management practices ("BMPs") at the Site which resulted in a discharge of pollutants into or adjacent to any water in the state. Specifically, the silt fencing was broken which allowed soil to leave the Site and go into roadside ditches and caused blockages in the culverts.			
			Base Penalty	\$25,000
>> Environmental, Property and Human Health Matrix				
OR		Harm		
	Release	Major	Moderate	Minor
	Actual		X	
	Potential			
			Percent	25.0%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
			Percent	0.0%
Matrix Notes	Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
			Adjustment	\$18,750
				\$6,250
>> Violation Events				
Number of Violation Events		2	44	Number of violation days
	daily			
	weekly			
	monthly	X		
	quarterly			
	semiannual			
	annual			
	single event			
			Violation Base Penalty	\$12,500
Two monthly events are recommended from the investigation date (August 29, 2022) to the screening date (October 12, 2022).				
Good Faith Efforts to Comply		10.0%	Reduction	\$1,250
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer		
	Extraordinary			
	Ordinary	X		
	N/A			
Notes	The Respondent achieved compliance by October 14, 2022.			
			Violation Subtotal	\$11,250
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	\$28	Violation Final Penalty Total	\$11,250	
This violation Final Assessed Penalty (adjusted for limits)			\$11,250	

Economic Benefit Worksheet

Respondent Case ID No. Reg. Ent. Reference No. Media Violation No.

WJH LLC 63239 RN111332771 Water Quality 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	\$3,000	29-Aug-2022	14-Oct-2022	0.13	\$1	\$25	\$26
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	\$300	29-Aug-2022	14-Oct-2022	0.13	\$2	n/a	\$2
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated Engineering/Construction cost to lay down sod to reach final stabilization. The Date Required is the investigation date. The Final Date is the date of compliance.

Estimated Remediation/Disposal cost to remove and properly dispose of the soil from the roadside ditches and culverts. The Date Required is the investigation date. The Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$3,300	TOTAL	\$28
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Compliance History Report

Compliance History Report for CN605931955, RN111332771, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN605931955, WJH LLC **Classification:** SATISFACTORY **Rating:** 2.40

Regulated Entity: RN111332771, CEDAR POINT SUBDIVISION **Classification:** SATISFACTORY **Rating:** 2.40

Complexity Points: 5 **Repeat Violator:** NO

CH Group: 09 - Construction

Location: approximately 2000 feet west from the intersection of United States Highway 190 and Cedar Point in Livingston, Polk County, Texas

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):

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

Date Compliance History Report Prepared: August 28, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 28, 2018 to August 28, 2023

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

Name: TCEQ Staff Member

Phone: (512) 239-1000

Site and Owner/Operator History:

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

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

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

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

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

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

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WJH LLC
RN111332771

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

AGREED ORDER DOCKET NO. 2022-1433-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 WJH LLC (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates construction sites located approximately 2000 feet west from the intersection of United States Highway 190 and Cedar Point in Livingston, Polk County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$11,250 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$9,000 of the penalty and \$2,250 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Site:
 - a. By October 14, 2022, laid down sod to reach final stabilization; and
 - b. By October 14, 2022, removed and properly disposed of the soil from the roadside ditches and culverts.

II. ALLEGATIONS

During an investigation at the Sites conducted on August 29, 2022, an investigator documented that the Respondent failed to install and maintain best management practices at the Site which resulted in a discharge of pollutants into or adjacent to any water in the state, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and Texas Pollutant Discharge Elimination System General Permit No. TXR1528GN, Part III, Section G.1. Specifically, the silt fencing was broken which allowed soil to leave the Site and go into roadside ditches and caused blockages in the culverts.

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: WJH LLC, Docket No. 2022-1433-WQ-E" to:

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

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

3/7/2024

For the Executive Director

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the 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.

Justin McCombs
Signature

1/22/2024

Date

Justin McCombs
Name (Printed or typed)
Authorized Representative of
WJH LLC

VP of Construction
Title

☐ 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.