

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 64008  
Commerce Sand & Select, LLC  
RN110639150  
Docket No. 2023-0710-WQ-E

Page 1 of 2

**Order Type:**  
Agreed Order

**Media:**  
WQ:APO

**Small Business:**  
Yes

**Location Where Violations Occurred:**  
5723 County Road 4317, Campbell, Hunt County (the “Site”)

**Type of Operation:**  
aggregate production operation (“APO”)

**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:** May 9, 2025

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$29,375

**Total Paid to General Revenue:** \$850

**Total Due to General Revenue:** \$28,525

**Payment Plan:** 35 payments of \$815 each

**Compliance History Classifications:**

Person/CN – High  
Site/RN – High

**Major Source:** No

**Statutory Limit Adjustment:** None

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

**Investigation Information**

**Complaint Date(s):** N/A

**Date of Investigation:** February 8, 2023

**Date(s) of NOV(s):** N/A

**Date of NOE:** March 30, 2023

**Commerce Sand & Select, LLC**

RN110639150

Docket No. 2023-0710-WQ-E

**Violation Information**

1. Failed to renew the aggregate production operation (“APO”) registration annually as regulated activities continued [30 TEX. ADMIN. CODE § 342.25(d)].
2. Failed to maintain authorization to discharge stormwater associated with industrial activities [30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c)].

**Corrective Actions/Technical Requirements****Corrective Actions Completed:**

The Executive Director recognizes that Respondent:

1. By January 20, 2023, renewed APO Registration No. AP0003365.
2. By February 8, 2023, obtained approval to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit No. TXR05FY95.

**Technical Requirements:**

None

**Litigation Information**

**Date Petition Filed:** July 17, 2024

**Date of Service:** July 19, 2024

**Settlement Date:** April 2, 2025

**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:** Monica Larina, Enforcement Division, (512) 239-0184

**TCEQ Regional Contact:** Brent Candler, Dallas/Fort Worth Regional Office, (817) 588-5800

**Respondent Contact:** Dwaine Bright, Director, Commerce Sand & Select, LLC, 1699 East Farm To Market 550, Rockwall, Texas 75032

**Respondent's Attorney:** Brian L. Benitez, Ensley Benitez Law, PC, 12222 Merit Drive, Suite 900, Dallas, Texas 75251



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	3-Apr-2023	<b>Screening</b>	7-Apr-2023	<b>EPA Due</b>	
	<b>PCW</b>	5-Jun-2023				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Commerce Sand & Select, LLC PCW No. 1 of 2				
<b>Reg. Ent. Ref. No.</b>	RN110639150				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	64008	<b>No. of Violations</b>	1		
<b>Docket No.</b>	2023-0710-WQ-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Aggregate Production Operation	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Monica Larina		
		<b>EC's Team</b>	Enforcement Team 1		
<b>Admin. Penalty \$ Limit Minimum</b>	\$5,000	<b>Maximum</b>	\$20,000	<b>Violation Maximum</b>	\$40,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	-10.0%	<b>Adjustment</b>	<b>Subtotals 2, 3, &amp; 7</b>	-\$200
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<b>Notes</b>	Reduction for High Performer classification.
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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>	-\$500
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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	\$16	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$790	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,300
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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>	\$1,300
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$5,000
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<b>Notes</b>	The final assessed penalty has been adjusted to meet the statutory requirements of Tex. Water Code § 28A.102.
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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>	\$5,000
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<b>Screening Date</b>	7-Apr-2023	<b>Docket No.</b>	2023-0710-WQ-E	<b>PCW</b>
<b>Respondent</b>	Commerce Sand & Select, LLC PCW No. 1 of 2			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	64008			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN110639150			
<b>Media</b>	Aggregate Production Operation			
<b>Enf. Coordinator</b>	Monica Larina			

### Compliance History Worksheet

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

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

**Adjustment Percentage (Subtotal 2)** 0%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

#### >> Compliance History Summary

**Compliance History Notes**

Reduction for High Performer classification.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** -10%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** -10%

<b>Screening Date</b>	7-Apr-2023	<b>Docket No.</b>	2023-0710-WQ-E	<b>PCW</b>
<b>Respondent</b>	Commerce Sand & Select, LLC PCW No. 1 of 2		Policy Revision 5 (January 28, 2021)	
<b>Case ID No.</b>	64008		PCW Revision February 11, 2021	
<b>Reg. Ent. Reference No.</b>	RN110639150			
<b>Media</b>	Aggregate Production Operation			
<b>Enf. Coordinator</b>	Monica Larina			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 342.25(d)			
<b>Violation Description</b>	Failed to renew the aggregate production operation ("APO") registration annually as regulated activities continued. Specifically, APO Registration No. AP0003365 expired on August 28, 2022, and the Respondent continued to operate.			
<b>Base Penalty</b>			\$20,000	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential			
			<b>Percent</b>	0.0%
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
		x		
			<b>Percent</b>	10.0%
Matrix Notes	100% of the rule requirement was not met.			
<b>Adjustment</b>			\$18,000	
			\$2,000	
<b>Violation Events</b>				
Number of Violation Events		1	Number of violation days	
		145		
	daily			
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	x		
			<b>Violation Base Penalty</b>	\$2,000
One single event is recommended.				
<b>Good Faith Efforts to Comply</b>		<b>25.0%</b>	Reduction	\$500
		Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
	Extraordinary			
	Ordinary	x		
	N/A			
	Notes	The Respondent achieved compliance on January 20, 2023.		
<b>Violation Subtotal</b>			\$1,500	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		\$16	<b>Violation Final Penalty Total</b>	\$1,300
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			\$5,000	

Case ID No. 64008

**Reg. Ent. Reference No.** RN110639150

Media	Aggregate Production Operation
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<b>Violation No.</b>	1
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Percent Interest	Years of Depreciation
0%	1
10%	2
20%	3
30%	4
40%	5
50%	6
60%	7
70%	8
80%	9
90%	10
100%	11

5.0	15
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Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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## Delayed Costs

Delayed Costs				2022	2023	2024	2025
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$790	28-Aug-2022	20-Jan-2023	0.40	\$16	n/a	\$16
Other (as needed)				0.00	\$0	n/a	\$0

### Notes for DELAYED costs

Actual Permit Costs to register the Site as an APO. The Date Required is the expiration date of APO Registration No. AP0003365, and the Final Date is the date of compliance.

## Avoided Costs

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

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

### Notes for AVOIDED costs

**Approx. Cost of Compliance**

\$790

**TOTAL**

\$16



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	3-Apr-2023	<b>Screening</b>	7-Apr-2023	<b>EPA Due</b>	
	<b>PCW</b>	5-Jun-2023				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Commerce Sand & Select, LLC PCW No. 2 of 2				
<b>Reg. Ent. Ref. No.</b>	RN110639150				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	64008	<b>No. of Violations</b>	1
<b>Docket No.</b>	2023-0710-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>	Monica Larina
		<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>	\$37,500
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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>	-10.0%	<b>Adjustment</b>	<b>Subtotals 2, 3, &amp; 7</b>	-\$3,750
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Notes Reduction for High Performer classification.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	-\$9,375
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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 \$169  
Estimated Cost of Compliance \$2,725  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$24,375
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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.

Notes

**Final Penalty Amount** \$24,375

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$24,375
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<b>DEFERRAL</b>		<b>Reduction</b>	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes

Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$24,375
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<b>Screening Date</b>	7-Apr-2023	<b>Docket No.</b>	2023-0710-WQ-E	<b>PCW</b>
<b>Respondent</b>	Commerce Sand & Select, LLC PCW No. 2 of 2			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	64008			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN110639150			
<b>Media</b>	Water Quality			
<b>Enf. Coordinator</b>	Monica Larina			

### Compliance History Worksheet

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

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

**Adjustment Percentage (Subtotal 2)** 0%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

#### >> Compliance History Summary

**Compliance History Notes**

Reduction for High Performer classification.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** -10%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** -10%



<b>Screening Date</b>	7-Apr-2023	<b>Docket No.</b>	2023-0710-WQ-E	<b>PCW</b>
<b>Respondent</b>	Commerce Sand & Select, LLC PCW No. 2 of 2	Policy Revision 5 (January 28, 2021)		
<b>Case ID No.</b>	64008	PCW Revision February 11, 2021		
<b>Reg. Ent. Reference No.</b>	RN110639150			
<b>Media</b>	Water Quality			
<b>Enf. Coordinator</b>	Monica Larina			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 281.25(a)(4), and 40 Code of Federal Regulations § 122.26(c)			
<b>Violation Description</b>	Failed to maintain authorization to discharge stormwater associated with industrial activities. Specifically, authorization under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit No. TXR05EG19 expired on November 12, 2021, and the Respondent continued to operate.			
<b>Base Penalty</b>				\$25,000

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 0.0%
	Potential				

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
		x			<b>Percent</b> 10.0%
<b>Matrix Notes</b>	100% of the rule requirements were not met.				
<b>Adjustment</b>					\$22,500

\$2,500

**Violation Events**

Number of Violation Events	15	453	Number of violation days
	daily		
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
<b>Violation Base Penalty</b>			

\$37,500

Fifteen monthly events are recommended, calculated from the permit expiration date (November 12, 2021) to the date of compliance (February 8, 2023).

**Good Faith Efforts to Comply**

	<b>25.0%</b>		
		Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary			
Ordinary	x		
N/A			
Notes	The Respondent achieved compliance on February 8, 2023.		
<b>Violation Subtotal</b>			\$28,125

**Economic Benefit (EB) for this violation**

	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b>	\$169
<b>Violation Final Penalty Total</b>	\$24,375
<b>This violation Final Assessed Penalty (adjusted for limits)</b>	

\$24,375

## Economic Benefit Worksheet

**Respondent** Commerce Sand & Select, LLC PCW No. 2 of 2  
**Case ID No.** 64008  
**Reg. Ent. Reference No.** RN110639150  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$225	12-Nov-2021	8-Feb-2023	1.24	\$14	n/a	\$14
Other (as needed)	\$2,500	12-Nov-2021	8-Feb-2023	1.24	\$155	n/a	\$155

#### Notes for DELAYED costs

Actual Permit Costs to prepare and submit a Notice of Intent to obtain authorization to discharge stormwater. Date Required is the date TPDES Multi-Sector General Permit No. TXR05EG19 expired. Final Date is the date of compliance.

Estimated Other cost to develop and implement a stormwater pollution prevention plan. Date Required is the date TPDES General Multi-Sector Permit No. TXR05EG19 expired. 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

\$2,725

**TOTAL**

\$169



# Compliance History Report

Compliance History Report for CN604737304, RN110639150, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

**Customer, Respondent, or Owner/Operator:** CN604737304, Commerce Sand & Select, LLC **Classification:** HIGH **Rating:** 0.00

**Regulated Entity:** RN110639150, COMMERCE SAND AND SELECT **Classification:** HIGH **Rating:** 0.00

**Complexity Points:** 3 **Repeat Violator:** NO

**CH Group:** 04 - Mining

**Location:** 5723 County Road 4317 in Campbell, Hunt County, Texas

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**  
**AGGREGATE PRODUCTION OPERATION REGISTRATION**  
AP0003365

**Compliance History Period:** September 01, 2018 to August 31, 2023 **Rating Year:** 2023 **Rating Date:** 09/01/2023

**Date Compliance History Report Prepared:** October 27, 2023

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** October 27, 2018 to October 27, 2023

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

**Name:** Monica Larina **Phone:** (512) 239-0184

## Site and Owner/Operator History:

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

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

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

N/A

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

N/A

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

N/A

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

N/A

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

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

N/A

### **F. Environmental audits:**

N/A

### **G. Type of environmental management systems (EMSs):**

N/A

### **H. Voluntary on-site compliance assessment dates:**

N/A

### **I. Participation in a voluntary pollution reduction program:**

N/A

### **J. Early compliance:**

N/A

### **Sites Outside of Texas:**

N/A

## Component Appendices

## Appendix A

### All NOVs Issued During Component Period 10/27/2018 and 10/27/2023

1	Date:	09/03/2020	(1672089)
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 342, SubChapter B 342.25 30 TAC Chapter 342, SubChapter B 342.25(a) 30 TAC Chapter 342, SubChapter B 342.25(b) 30 TAC Chapter 342, SubChapter B 342.25(c) 30 TAC Chapter 342, SubChapter B 342.25(d) 30 TAC Chapter 342, SubChapter B 342.25(e) 30 TAC Chapter 342, SubChapter B 342.25(f)	
	Description:	Failure to maintain APO permit current.	

\* NOV's applicable for the Compliance History rating period 9/1/2018 to 8/31/2023

## Appendix B

### **All Investigations Conducted During Component Period October 27, 2018 and October 27, 2023**

Item 1	August 31, 2020**	(1672089)
Item 2	November 05, 2020**	(1680209)
Item 3	March 29, 2023**	(1874814)

\* No violations documented during this investigation

**\*\*Investigation applicable for the Compliance History Rating period between 09/01/2018 and 08/31/2023.**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN ENFORCEMENT  
ACTION CONCERNING  
COMMERCE SAND & SELECT, LLC;  
RN110639150

§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER

DOCKET NO. 2023-0710-WQ-E

### I. JURISDICTION AND STIPULATIONS

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Commerce Sand & Select, LLC ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of TCEQ, represented by the Litigation Division, and Respondent, represented by Brian L. Benitez of the law firm Ensley Benitez Law, PC, together stipulate that:

1. Under terms defined in TEX. WATER CODE § 28A.001, Respondent is a responsible party because it is an owner and operator of an aggregate production operation ("APO") located at 5723 County Road 4317 in Campbell, Hunt County, Texas (the "Site"), where aggregates are being or have been removed or extracted from the Site's earth. The Site is also near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001.
2. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$29,375 is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid \$850 of the penalty. The remaining amount of \$28,525 shall be paid in 35 monthly payments of \$815 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may, at her option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order.
5. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, 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 Respondent has not complied with one or more of the terms or conditions contained 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 full compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that Respondent implemented the following corrective measures at the Site:
  - a. By January 20, 2023, renewed APO Registration No. AP0003365; and
  - b. By February 8, 2023, obtained approval to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR05FY95.<sup>1</sup>

## II. ALLEGATIONS

1. During a record review investigation for the Site conducted on February 8, 2023, an investigator documented that Respondent:
  - a. Failed to renew the APO registration annually as regulated activities continued, in violation of 30 TEX. ADMIN. CODE § 342.25(d). Specifically, APO Registration No. AP0003365 expired on August 28, 2022, and Respondent continued to operate; and
  - b. Failed to maintain authorization to discharge stormwater associated with industrial activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c). Specifically, authorization under TPDES MSGP No. TXR05EG19 expired on November 12, 2021, and Respondent continued to operate.

## III. DENIALS

Respondent generally denies each Allegation in Section II.

## IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and 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 actions 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: Commerce Sand & Select, LLC, Docket No. 2023-0710-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

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<sup>1</sup> Respondent obtained coverage for the Site under TPDES MSGP No. TXR05FY95 by using an alternate regulated entity number: RN110135142.

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 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.
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 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.
5. 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.
6. This Order, issued by the Commission, shall not be admissible against 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 TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
7. 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.
8. 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



5/19/2025

For the Executive Director

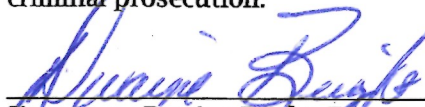
Date

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 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;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature - Dwaine Bright, Director  
Commerce Sand & Select, LLC  
1699 East Farm To Market 550  
Rockwall, Texas 75032

Date

4-2-25

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