

Executive Summary – Enforcement Matter – Case No. 64140
EGGEMEYER LAND CLEARING, LLC
RN106324650
Docket No. 2023-0837-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – AIR, EAQ, MSW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Eggmeyer Land Clearing Brush Recycling Facility, 333 North Solms Road, New Braunfels, Comal County

Type of Operation:

Municipal solid waste recycling facility

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: March 15, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$24,687

Amount Deferred for Expedited Settlement: \$4,937

Total Paid to General Revenue: \$19,750

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): October 11, 2022 and October 14, 2022

Complaint Information: Alleged the facility has had many fires. Runoff was flowing into Dry Comal Creek and thence into the Comal River. There was also a large mulch fire.

Date(s) of Investigation: October 11, 2022 through October 27, 2022

Date(s) of NOE(s): May 15, 2023

Executive Summary – Enforcement Matter – Case No. 64140
EGGEMEYER LAND CLEARING, LLC
RN106324650
Docket No. 2023-0837-MLM-E

Violation Information

1. Failed to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone. Specifically, the Respondent installed an above ground storage tank ("AST") storing 515 gallons of diesel prior to obtaining approval of an Edwards Aquifer AST System Facility Plan [30 TEX. ADMIN. CODE § 213.4(a)(1)].
2. Failed to have a fire prevention and suppression plan and make it available to the local fire prevention authority. Specifically, the Respondent did not provide documentation that the fire prevention and suppression plan was made available to the local fire department and the fire prevention and suppression plan submitted on August 10, 2012 was not adequate due to the local fire department responding to several mulch fires at the Site throughout the years that the Site has been in operation [30 TEX. ADMIN. CODE § 328.5(h)].
3. Failed to prevent nuisance smoke conditions and failed to prevent the discharge of emissions in such quantities which have a tendency to cause a traffic hazard or an interference with normal road use. Specifically, TCEQ staff documented that the fire at the Site resulted in the closure of North Solms Road on October 11, 2022 and the smoke from the fire at the Site drifted across North Solms Road on October 12, 2022 and caused a traffic hazard [30 TEX. ADMIN. CODE §§ 101.4 and 101.5 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

- a. On October 12, 2022, placed traffic hazard signs on North Solms Road;
- b. By October 27, 2022, extinguished the fire at the Site;
- c. By November 1, 2022, installed a three-inch water line around the perimeter of the property to ensure that smoke from the Site does not cause nuisance smoke conditions that impact off-site receptors and a traffic hazard due to the same or similar causes as the incidents that occurred on October 11, 2022 and October 12, 2022;
- d. By May 26, 2023, prepared a fire prevention and suppression plan and made it available to the Comal County Fire Marshall's Office; and
- e. By February 15, 2023, emptied and replaced the 515-gallon AST with a 250-gallon AST.

**Executive Summary – Enforcement Matter – Case No. 64140
EGGEMEYER LAND CLEARING, LLC
RN106324650
Docket No. 2023-0837-MLM-E**

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Danielle Porras, Enforcement Division, Enforcement Team 2, MC R-12, (713) 767-3682; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Steven Eggemeyer, President, EGGEMEYER LAND CLEARING, LLC, 329 County Road 395, Yoakum, Texas 77995

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	31-May-2023			
	PCW	20-Jan-2024	Screening	8-Jun-2023	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	EGGEMEYER LAND CLEARING, LLC				
Reg. Ent. Ref. No.	RN106324650				
Facility/Site Region	13-San Antonio		Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	64140	No. of Violations	3
Docket No.	2023-0837-MLM-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media	Edwards Aquifer and Municipal Solid Waste	Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$28,750
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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	5.0%	Adjustment	Subtotals 2, 3, & 7	\$1,437
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Notes	Enhancement for one NOV with same/similar violations.			
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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	-\$5,500
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$122	<i>*Capped at the Total EB \$ Amount</i>
Estimated Cost of Compliance	\$17,250	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$24,687
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$24,687
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DEFERRAL	20.0%	Reduction	Adjustment	-\$4,937
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.			
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PAYABLE PENALTY	\$19,750
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Screening Date8-Jun-2023

RespondentEGGEMEYER LAND CLEARING, LLC

Case ID No.64140

Reg. Ent. Reference No.RN106324650

MediaAir

Enf. CoordinatorDanielle Porras

Docket No.2023-0837-MLM-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 (<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)

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	Enhancement for one NOV with same/similar violations.
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Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%5%

Screening Date		8-Jun-2023	Docket No.		2023-0837-MLM-E	PCW	
Respondent		EGGEMEYER LAND CLEARING, LLC				Policy Revision 5 (January 28, 2021)	
Case ID No.		64140				PCW Revision February 11, 2021	
Reg. Ent. Reference No.		RN106324650					
Media		Air					
Enf. Coordinator		Danielle Porras					
Violation Number		1					
Rule Cite(s)		30 Tex. Admin. Code § 213.4(a)(1)					
Violation Description		Failed to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone. Specifically, the Respondent installed an above ground storage tank ("AST") storing 515 gallons of diesel prior to obtaining approval of an Edwards Aquifer AST System Facility Plan.					
Base Penalty						\$25,000	
>> Environmental, Property and Human Health Matrix							
OR	Release		Harm				
		Major	Moderate	Minor			
	Actual						
	Potential				Percent 0.0%		
>> Programmatic Matrix							
	Falsification	Major	Moderate	Minor			
		x			Percent 10.0%		
Matrix Notes		100% of the rule requirements were not met.					
Adjustment						\$22,500	
						\$2,500	
Violation Events							
Number of Violation Events		2		127		Number of violation days	
	daily						
	weekly						
	monthly						
	quarterly	x					
	semiannual						
	annual						
	single event						
Violation Base Penalty						\$5,000	
Two quarterly events are recommended from the October 11, 2022 investigation date to the February 15, 2023 compliance date.							
Good Faith Efforts to Comply		25.0%		Reduction		\$1,250	
	Extraordinary						
	Ordinary	x					
	N/A						
	Notes	The Respondent completed the corrective measures by February 15, 2023, prior to the Notice of Enforcement ("NOE") dated May 15, 2023.					
Violation Subtotal						\$3,750	
Economic Benefit (EB) for this violation				Statutory Limit Test			
Estimated EB Amount		\$87		Violation Final Penalty Total		\$4,000	
This violation Final Assessed Penalty (adjusted for limits)						\$4,000	

Economic Benefit Worksheet

Respondent EGGEMEYER LAND CLEARING, LLC
Case ID No. 64140
Reg. Ent. Reference No. RN106324650
Media Air
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				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	11-Oct-2022	15-Feb-2023	0.35	\$87	n/a	\$87
Notes for DELAYED costs	Estimated cost to empty and replace the 515-gallon AST with a 250-gallon AST. The Date Required is the investigation date and 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 \$5,000

TOTAL \$87

Screening Date		8-Jun-2023		Docket No. 2023-0837-MLM-E		PCW	
Respondent		EGGEMEYER LAND CLEARING, LLC				Policy Revision 5 (January 28, 2021)	
Case ID No.		64140				PCW Revision February 11, 2021	
Reg. Ent. Reference No.		RN106324650					
Media		Air					
Enf. Coordinator		Danielle Porras					
Violation Number		2					
Rule Cite(s)		30 Tex. Admin. Code § 328.5(h)					
Violation Description		Failed to have a fire prevention and suppression plan and make it available to the local fire prevention authority. Specifically, the Respondent did not provide documentation that the fire prevention and suppression plan was made available to the local fire department and the fire prevention and suppression plan submitted on August 10, 2012 was not adequate due to the local fire department responding to several mulch fires at the Site throughout the years that the Site has been in operation.					
Base Penalty						\$25,000	
>> Environmental, Property and Human Health Matrix							
OR	Release		Harm				
		Major	Moderate	Minor			
	Actual						
	Potential	x			Percent	15.0%	
>> Programmatic Matrix							
	Falsification	Major	Moderate	Minor			
					Percent	0.0%	
Matrix Notes	Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.						
Adjustment						\$21,250	
						\$3,750	
Violation Events							
Number of Violation Events		3		227		Number of violation days	
	daily						
	weekly						
	monthly						
	quarterly	x		Violation Base Penalty			
	semiannual			\$11,250			
	annual						
	single event						
Three quarterly events are recommended from the October 11, 2022 investigation date to the May 26, 2023 compliance date.							
Good Faith Efforts to Comply		10.0%		Reduction		\$1,125	
	Extraordinary						
	Ordinary			x			
	N/A						
Notes	The Respondent completed the corrective measures by May 26, 2023, after the NOE dated May 15, 2023.						
Violation Subtotal						\$10,125	
Economic Benefit (EB) for this violation				Statutory Limit Test			
Estimated EB Amount		\$8		Violation Final Penalty Total		\$10,688	
This violation Final Assessed Penalty (adjusted for limits)						\$10,688	

Economic Benefit Worksheet

Respondent EGGE MEYER LAND CLEARING, LLC
Case ID No. 64140
Reg. Ent. Reference No. RN106324650
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	11-Oct-2022	26-May-2023	0.62	\$8	n/a	\$8
Notes for DELAYED costs	Estimated cost to prepare a fire prevention and suppression plan and make it available to the Comal County Fire Marshall's Office. The Date Required is the investigation date and 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 \$250

TOTAL \$8

Screening Date		8-Jun-2023		Docket No.		2023-0837-MLM-E		PCW	
Respondent		EGGEMEYER LAND CLEARING, LLC						Policy Revision 5 (January 28, 2021)	
Case ID No.		64140						PCW Revision February 11, 2021	
Reg. Ent. Reference No.		RN106324650							
Media		Air							
Enf. Coordinator		Danielle Porras							
Violation Number		3							
Rule Cite(s)		30 Tex. Admin. Code §§ 101.4 and 101.5 and Tex. Health & Safety Code § 382.085(a) and (b)							
Violation Description		Failed to prevent nuisance smoke conditions and failed to prevent the discharge of emissions in such quantities which have a tendency to cause a traffic hazard or an interference with normal road use. Specifically, TCEQ staff documented that the fire at the Site resulted in the closure of North Solms Road on October 11, 2022 and the smoke from the fire at the Site drifted across North Solms Road on October 12, 2022 and caused a traffic hazard.							
Base Penalty								\$25,000	
>> Environmental, Property and Human Health Matrix									
OR		Release		Harm					
		Major		Moderate		Minor			
		Actual		x				Percent 25.0%	
		Potential							
>>Programmatic Matrix									
		Falsification		Major		Moderate		Minor	
								Percent 0.0%	
Matrix Notes		Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.							
Adjustment								\$18,750	
								\$6,250	
Violation Events									
Number of Violation Events		2		2		Number of violation days			
		daily							
		weekly							
		monthly							
		quarterly							
		semiannual							
		annual							
		single event		x				Violation Base Penalty \$12,500	
		Two single events are recommended for each day nuisance smoke conditions and a traffic hazard was documented.							
Good Faith Efforts to Comply		25.0%				Reduction		\$3,125	
		Before NOE/NOV		NOE/NOV to EDPRP/Settlement Offer					
		Extraordinary							
		Ordinary		x					
		N/A							
Notes		The Respondent completed the corrective measures by November 1, 2022, prior to the NOE dated May 15, 2023.							
Violation Subtotal								\$9,375	
Economic Benefit (EB) for this violation					Statutory Limit Test				
Estimated EB Amount		\$27		Violation Final Penalty Total		\$10,000			
This violation Final Assessed Penalty (adjusted for limits)								\$10,000	

Economic Benefit Worksheet

Respondent EGGEMEYER LAND CLEARING, LLC
Case ID No. 64140
Reg. Ent. Reference No. RN106324650
Media Air
Violation No. 3

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
Other (as needed)	\$10,500	11-Oct-2022	27-Oct-2022	0.04	\$23	n/a	\$23
Other (as needed)	\$1,500	11-Oct-2022	1-Nov-2022	0.06	\$4	n/a	\$4

Notes for DELAYED costs

Estimated costs to place traffic hazard signs on North Solms Road (\$500), extinguish the fire at the Site (\$10,000), and install a three-inch water line around the perimeter of the property to ensure that smoke from the Site does not cause nuisance smoke conditions that impact off-site receptors and a traffic hazard due to the same or similar causes as the incidents that occurred on October 11, 2022 and October 12, 2022 (\$1,500). The Dates Required are the investigation date and the Final Dates are the dates 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	\$12,000	TOTAL	\$27
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Compliance History Report

Compliance History Report for CN603114612, RN106324650, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN603114612, EGGEMEYER LAND CLEARING, LLC **Classification:** SATISFACTORY **Rating:** 2.80

Regulated Entity: RN106324650, EGGEMEYER LAND CLEARING BRUSH RECYCLING FACILITY **Classification:** SATISFACTORY **Rating:** 2.80

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 333 North Solm Road in New Braunfels, Comal County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

STORMWATER PERMIT TXR05FX07

MUNICIPAL SOLID WASTE PROCESSING REGISTRATION
100359

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

Date Compliance History Report Prepared: July 03, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 03, 2018 to July 03, 2023

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

Name: Danielle Porras

Phone: (713) 767-3682

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.

- | | | | | |
|---|--------------|---|-----------|-----------------------|
| 1 | Date: | 03/24/2023 | (1873093) | |
| | Self Report? | NO | | Classification: Minor |
| | Citation: | 30 TAC Chapter 332, SubChapter A 332.8(b)(2)
30 TAC Chapter 332, SubChapter A 332.8(b)(3)
5C THSC Chapter 382 382.085(b) | | |
| | Description: | Failure to achieve maximum control of dust emissions through watering, treatment of dust suppression chemicals, or paving and cleaning of roads and failure to utilize dust suppression system when stock piling ground material. | | |

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
EGGEMEYER LAND CLEARING, LLC
RN106324650

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

AGREED ORDER DOCKET NO. 2023-0837-MLM-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 EGGEMEYER LAND CLEARING, LLC (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and 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 municipal solid waste recycling facility located at 333 North Solms Road in New Braunfels, Comal County, Texas (the "Site"). The Site consists or consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5). The Site involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
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, TEX. HEALTH & SAFETY CODE chs. 361 and 382, 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 \$24,687 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$19,750 of the penalty and \$4,937 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. On October 12, 2022, placed traffic hazard signs on North Solms Road;
 - b. By October 27, 2022, extinguished the fire at the Site;
 - c. By November 1, 2022, installed a three-inch water line around the perimeter of the property to ensure that smoke from the Site does not cause nuisance smoke conditions that impact off-site receptors and a traffic hazard due to the same or similar causes as the incidents that occurred on October 11, 2022 and October 12, 2022;
 - d. By May 26, 2023, prepared a fire prevention and suppression plan and made it available to the Comal County Fire Marshall's Office; and
 - e. By February 15, 2023, emptied and replaced the 515-gallon above ground storage tank ("AST") with a 250-gallon AST.

II. ALLEGATIONS

During an investigation at the Site conducted from October 11, 2022 through October 27, 2022, an investigator documented that the Respondent:

1. Failed to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1). Specifically, the Respondent installed an AST storing 515 gallons of diesel prior to obtaining approval of an Edwards Aquifer AST System Facility Plan.
2. Failed to have a fire prevention and suppression plan and make it available to the local fire prevention authority, in violation of 30 TEX. ADMIN. CODE § 328.5(h). Specifically, the Respondent did not provide documentation that the fire prevention and suppression plan was made available to the local fire department and the fire prevention and suppression plan submitted on August 10, 2012 was not adequate due to the local fire

department responding to several mulch fires at the Site throughout the years that the Site has been in operation.

3. Failed to prevent nuisance smoke conditions and failed to prevent the discharge of emissions in such quantities which have a tendency to cause a traffic hazard or an interference with normal road use, in violation of 30 TEX. ADMIN. CODE §§ 101.4 and 101.5 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b). Specifically, TCEQ staff documented that the fire at the Site resulted in the closure of North Solms Road on October 11, 2022 and the smoke from the fire at the Site drifted across North Solms Road on October 12, 2022 and caused a traffic hazard.

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: EGGEMEYER LAND CLEARING, LLC, Docket No. 2023-0837-MLM-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.

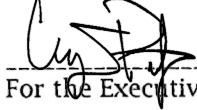
6. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic 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



4/2/2024

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.


Signature

2/06/24
Date

Steven W. Eggemeier
Name (Printed or typed)
Authorized Representative of
EGGEMEYER LAND CLEARING, LLC

President
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.