

Executive Summary – Enforcement Matter – Case No. 64297

Capitol Aggregates, Inc.

RN108959032

Docket No. 2023-0900-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – EAQ, WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Capitol Aggregates Rio Medina Operation, 1576 County Road 265, Hondo, Medina County

Type of Operation:

Aggregate production operation

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 3, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,388

Amount Deferred for Expedited Settlement: \$2,677

Total Paid to General Revenue: \$5,356

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project (“SEP”) Conditional Offset: \$5,355

Name of SEP: Texas Water Development Board (Third-Party Pre-Approved)

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: May 2, 2023

Date(s) of NOE(s): June 23, 2023

Executive Summary – Enforcement Matter – Case No. 64297
Capitol Aggregates, Inc.
RN108959032
Docket No. 2023-0900-MLM-E

Violation Information

1. Failed to maintain the Edwards Aquifer detention basin. Specifically, several large trees were growing in the detention basin along the rock riprap and vegetation was overgrown throughout the detention basin [30 TEX. ADMIN. CODE §§ 213.4(k) and 213.5(b)(5)(A) and Edwards Aquifer Water Pollution Abatement Plan Nos. 13000715 and 13000073, Standard Conditions No. 19].
2. Failed to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, a 500-gallon AST was installed without the prior approval of an Edwards Aquifer AST System Facility Plan [30 TEX. ADMIN. CODE § 213.4(a)(1)].
3. Failed to minimize the off-site vehicle tracking of sediment. Specifically, there was significant off-site vehicle tracking of sediment from the Facility's rock rubble entrance onto County Road 265 [30 TEX. ADMIN. CODE § 281.25(a)(4) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit No. TXR05EG16, Part V, Section J, No. 9(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

- a. By May 4, 2023, removed the sediment accumulations from the Facility's rock rubble entrance and County Road 265;
- b. By July 12, 2023, removed the trees from the detention basin and mowed the grass to a height of 18-inches or less; and
- c. By July 12, 2023, moved the Aboveground Storage Tank ("AST") from the ground onto a mobile trailer.

Technical Requirements:

The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).

Executive Summary – Enforcement Matter – Case No. 64297
Capitol Aggregates, Inc.
RN108959032
Docket No. 2023-0900-MLM-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Megan Crinklaw, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-1129; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

SEP Third-Party Administrator: Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231

Respondent: David S. Zachry, Chief Executive Officer, Capitol Aggregates, Inc., P.O. Box 33240, San Antonio, Texas 78265

W. Scotty Gerbes, Vice President, Capitol Aggregates, Inc., P.O. Box 33240, San Antonio, Texas 78265

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	26-Jun-2023			
	PCW	13-Jul-2023	Screening	30-Jun-2023	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Capitol Aggregates, Inc. PCW No. 1 of 2				
Reg. Ent. Ref. No.	RN108959032				
Facility/Site Region	13-San Antonio	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	64297	No. of Violations	2
Docket No.	2023-0900-MLM-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Megan Crinklaw
		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	\$11,750
---	-------------------	----------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
---------------------------	-------------	-------------------	--------------------------------	-----

Notes	No adjustment for compliance history.			
--------------	---------------------------------------	--	--	--

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

Notes	The Respondent does not meet the culpability criteria.			
--------------	--	--	--	--

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$1,175
--	-------------------	----------

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

Total EB Amounts	\$36	<i>*Capped at the Total EB \$ Amount</i>
Estimated Cost of Compliance	\$3,650	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,575
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	-------------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
	Final Penalty Amount
	\$10,575

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,575
-----------------------------------	-------------------------------	----------

DEFERRAL	20.0%	Reduction	Adjustment	-\$2,115
-----------------	--------------	------------------	-------------------	----------

Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.			
--------------	--	--	--	--

PAYABLE PENALTY	\$8,460
------------------------	---------

Screening Date

30-Jun-2023

Docket No.

2023-0900-MLM-E

PCW

Respondent

Capitol Aggregates, Inc. PCW No. 1 of 2

Case ID No.

64297

Reg. Ent. Reference No.

RN108959032

Media

Edwards Aquifer

Enf. Coordinator

Megan Crinklaw

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>)	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)

Satisfactory Performer

Adjustment Percentage (Subtotal 7)

0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

0%

Screening Date		30-Jun-2023	Docket No.		2023-0900-MLM-E	PCW	
Respondent		Capitol Aggregates, Inc. PCW No. 1 of 2				<i>Policy Revision 5 (January 28, 2021)</i>	
Case ID No.		64297				<i>PCW Revision February 11, 2021</i>	
Reg. Ent. Reference No.		RN108959032					
Media		Edwards Aquifer					
Enf. Coordinator		Megan Crinklaw					
Violation Number		1					
Rule Cite(s)		30 Tex. Admin. Code §§ 213.4(k) and 213.5(b)(5)(A) and Edwards Aquifer Water Pollution Abatement Plan No. 13000715 and 13000073, Standard Conditions No. 19					
Violation Description		Failed to maintain the Edwards Aquifer detention basin. Specifically, several large trees were growing in the detention basin along the rock riprap and vegetation was overgrown throughout the detention basin.					
Base Penalty						\$25,000	
>> Environmental, Property and Human Health Matrix							
OR	Release		Harm				
		Major	Moderate	Minor			
	Actual						
	Potential			x	Percent	7.0%	
>>Programmatic Matrix							
	Falsification	Major	Moderate	Minor			
					Percent	0.0%	
Matrix Notes	Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.						
Adjustment						\$23,250	
						\$1,750	
Violation Events							
Number of Violation Events		1	59	Number of violation days			
	daily						
	weekly						
	monthly						
	quarterly	x		Violation Base Penalty			
	semiannual			\$1,750			
	annual						
	single event						
One quarterly event is recommended from the May 2, 2023 investigation date to the June 30, 2023 screening date.							
Good Faith Efforts to Comply		10.0%		Reduction		\$175	
	Extraordinary						
	Ordinary		x				
	N/A						
	Notes	The Respondent achieved compliance by July 12, 2023.					
Violation Subtotal						\$1,575	
Economic Benefit (EB) for this violation				Statutory Limit Test			
Estimated EB Amount		\$5		Violation Final Penalty Total		\$1,575	
This violation Final Assessed Penalty (adjusted for limits)						\$1,575	

Economic Benefit Worksheet

Respondent Case ID No. Reg. Ent. Reference No. Media Violation No. Capitol Aggregates, Inc. PCW No. 1 of 2 64297 RN108959032 Edwards Aquifer 1

Percent Interest	Years of Depreciation
5.0	15

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

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)	\$500	2-May-2023	12-Jul-2023	0.19	\$5	n/a	\$5

Notes for DELAYED costs Estimated Other cost to maintain the basin by removing trees and overgrown vegetation. 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 \$500 TOTAL \$5

Screening Date

30-Jun-2023

Docket No.

2023-0900-MLM-E

PCW

Respondent

Capitol Aggregates, Inc. PCW No. 1 of 2

Case ID No.

64297

Reg. Ent. Reference No.

RN108959032

Media

Edwards Aquifer

Enf. Coordinator

Megan Crinklaw

Violation Number

2

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 Recharge Zone. Specifically, a 500-gallon Aboveground Storage Tank ("AST") was installed without the prior approval of an Edwards Aquifer AST System Facility Plan.

Base Penalty

\$25,000

>> Environmental, Property and Human Health Matrix

OR

Release

Major

Moderate

Minor

Actual

Potential

Percent

0.0%

>>Programmatic Matrix

Falsification

Major

Moderate

Minor

x

Percent

20.0%

Matrix Notes

100% of the rule requirements were not met.

Adjustment

\$20,000

\$5,000

Violation Events

Number of Violation Events

2

59

Number of violation days

daily

weekly

monthly

quarterly

semiannual

annual

single event

x

Violation Base Penalty

\$10,000

Two monthly events are recommended from the May 2, 2023 investigation date to the June 30, 2023 screening date.

Good Faith Efforts to Comply

10.0%

Reduction

\$1,000

Before NOE/NOV

NOE/NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

x

N/A

Notes

The Respondent achieved compliance by July 12, 2023.

Violation Subtotal

\$9,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

\$31

Violation Final Penalty Total

\$9,000

This violation Final Assessed Penalty (adjusted for limits)

\$9,000

Economic Benefit Worksheet

Respondent Case ID No. Reg. Ent. Reference No. Media Violation No. Capitol Aggregates, Inc. PCW No. 1 of 2 64297 RN108959032 Edwards Aquifer 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$3,150	2-May-2023	12-Jul-2023	0.19	\$31	n/a	\$31
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated Permit cost to prepare, submit, and obtain approval of an Edwards Aquifer AST System Facility Plan. 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 \$3,150 TOTAL \$31



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	26-Jun-2023			
	PCW	13-Jul-2023	Screening	30-Jun-2023	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Capitol Aggregates, Inc. PCW No. 2 of 2				
Reg. Ent. Ref. No.	RN108959032				
Facility/Site Region	13-San Antonio		Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	64297	No. of Violations	1
Docket No.	2023-0900-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Edwards Aquifer	Enf. Coordinator	Megan Crinklaw
		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	\$3,750
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
---------------------------	-------------	-------------------	--------------------------------	-----

Notes	No adjustment for compliance history.			
--------------	---------------------------------------	--	--	--

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

Notes	The Respondent does not meet the culpability criteria.				
--------------	--	--	--	--	--

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$937
--	-------------------	--------

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

Total EB Amounts	\$0	<i>*Capped at the Total EB \$ Amount</i>
Estimated Cost of Compliance	\$500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,813
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	-------------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$2,813
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,813
-----------------------------------	-------------------------------	---------

DEFERRAL	20.0%	Reduction	Adjustment	-\$562
-----------------	--------------	------------------	-------------------	--------

Reduces the Final Assessed Penalty by the indicated percentage.

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,251
------------------------	---------

Screening Date

30-Jun-2023

Docket No.

2023-0900-MLM-E

PCW

Respondent

Capitol Aggregates, Inc. PCW No. 2 of 2

Case ID No.

64297

Reg. Ent. Reference No.

RN108959032

Media

Water Quality

Enf. Coordinator

Megan Crinklaw

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>)	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)

Satisfactory Performer

Adjustment Percentage (Subtotal 7)

0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

0%

Screening Date	30-Jun-2023	Docket No.	2023-0900-MLM-E	PCW
Respondent	Capitol Aggregates, Inc. PCW No. 2 of 2			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	64297			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN108959032			
Media	Water Quality			
Enf. Coordinator	Megan Crinklaw			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit No. TXR05EG16, Part V, Section J, No.9(d)			
Violation Description	Failed to minimize the off-site vehicle tracking of sediment. Specifically, there was significant off-site vehicle tracking of sediment from the Facility's rock rubble entrance onto County Road 265.			
		Base Penalty	\$25,000	
>> Environmental, Property and Human Health Matrix				
OR		Release	Harm	
		Major	Moderate	Minor
	Actual			x
	Potential			
		Percent	15.0%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	Percent	0.0%		
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
	Adjustment	\$21,250		
			\$3,750	
Violation Events				
	Number of Violation Events	1	2	Number of violation days
	daily			
	weekly			
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
	Violation Base Penalty	\$3,750		
	One quarterly event is recommended from the May 2, 2023 investigation date to the May 4, 2023 date of compliance.			
Good Faith Efforts to Comply	25.0%		Reduction	\$937
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer		
	Extraordinary			
	Ordinary	x		
	N/A			
	Notes	The Respondent achieved compliance by May 4, 2023.		
	Violation Subtotal	\$2,813		
Economic Benefit (EB) for this violation				
Statutory Limit Test				
Estimated EB Amount	\$0		Violation Final Penalty Total	\$2,813
This violation Final Assessed Penalty (adjusted for limits)				\$2,813

Economic Benefit Worksheet

Respondent

Case ID No.

Reg. Ent. Reference No.

Media

Violation No.

Capitol Aggregates, Inc. PCW No. 2 of 2
64297
RN108959032
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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

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)	\$500	2-May-2023	4-May-2023	0.01	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the sediment accumulations from the Facility’s rock rubble entrance and County Road 265. The Date Required is the date of the investigation 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

\$500

TOTAL

\$0



Compliance History Report

Compliance History Report for CN604033142, RN108959032, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN604033142, Capitol Aggregates, Inc. **Classification:** SATISFACTORY **Rating:** 0.10

Regulated Entity: RN108959032, CAPITOL AGGREGATES RIO MEDINA OPERATION **Classification:** HIGH **Rating:** 0.00

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

CH Group: 04 - Mining

Location: 1576 County Road 265, Hondo, Medina County, Texas 78861

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

AGGREGATE PRODUCTION OPERATION REGISTRATION
AP0002328

AIR NEW SOURCE PERMITS PERMIT 138162

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 93605

EDWARDS AQUIFER PERMIT 13000073

EDWARDS AQUIFER PERMIT 13000715

EDWARDS AQUIFER PERMIT 13001774

STORMWATER PERMIT TXR05EG16

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

Date Compliance History Report Prepared: November 27, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 27, 2018 to November 27, 2023

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

Name: Megan Crinklaw

Phone: (512) 239-1129

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.):

Item 1 July 25, 2019 (1580355)

Item 3 November 30, 2020 (1686238)

Item 4 March 23, 2023 (1894089)

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
CAPITOL AGGREGATES, INC.
RN108959032

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

AGREED ORDER DOCKET NO. 2023-0900-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 Capitol Aggregates, Inc. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates an aggregate production operation located at 1576 County Road 265 in Hondo, Medina County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$13,388 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$5,356 of the penalty and \$2,677 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms and conditions contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.

Pursuant to TEX. WATER CODE § 7.067, \$5,355 of the penalty shall be conditionally offset by the Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the attached SEP Agreement ("Attachment A", incorporated herein by reference). The Respondent's obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

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 Facility:
 - a. By May 4, 2023, removed the sediment accumulations from the Facility's rock rubble entrance and County Road 265;
 - b. By July 12, 2023, removed the trees from the detention basin and mowed the grass to a height of 18-inches or less; and
 - c. By July 12, 2023, moved the Aboveground Storage Tank ("AST") from the ground onto a mobile trailer.

II. ALLEGATIONS

During an investigation at the Facility conducted on May 2, 2023, an investigator documented that the Respondent:

1. Failed to maintain the Edwards Aquifer detention basin, in violation of 30 TEX. ADMIN. CODE §§ 213.4(k) and 213.5(b)(5)(A) and Edwards Aquifer Water Pollution Abatement Plan Nos. 13000715 and 13000073, Standard Conditions No. 19. Specifically, several large trees were growing in the detention basin along the rock riprap and vegetation was overgrown throughout the detention basin.
2. Failed to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1). Specifically, a 500-gallon AST was installed without the prior approval of an Edwards Aquifer AST System Facility Plan.
3. Failed to minimize the off-site vehicle tracking of sediment, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit No. TXR05EG16, Part V, Section J, No. 9(d). Specifically, there was significant off-site vehicle tracking of sediment from the Facility's rock rubble entrance onto County Road 265.

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: Capitol Aggregates, Inc., Docket No. 2023-0900-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. The Respondent shall implement and complete the SEP as set forth in Section I, Paragraph No. 4. The amount of \$5,355 of the assessed penalty is conditionally offset based on the Respondent's implementation and completion of the SEP pursuant to the terms of the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. 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.
6. 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.
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.

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

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

Date

Name (Printed or typed)
Authorized Representative of
Capitol Aggregates, Inc.

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.

Attachment A
Docket Number: 2023-0900-MLM-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Capitol Aggregates, Inc.
Payable Penalty Amount:	\$10,711
SEP Offset Amount:	\$5,355
Type of SEP:	Contribution to a Third-Party Administrator SEP
Third-Party Administrator:	Texas Water Development Board
Project Name:	<i>Water-Level Recorder Data in Every Texas County</i>
Total Project Budget:	\$997,500
Location of SEP:	Statewide; preference for Medina County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Texas Water Development Board** for the *Water-Level Recorder Data in Every Texas County* project (the “Project”). The Project is to purchase, install, and maintain automatic water-level recorders in unused wells in the remaining one hundred sixty-six (166) counties. The Third-Party Administrator shall give preference to installing water-level recorders initially in counties in which there are 1) no existing automatic water-level recorder wells, 2) no groundwater conservation district, or 3) groundwater conservation districts that do not have the staff and/or the financial ability to install an automatic water-level recorder. The Project will be done in accordance with all federal, state, and local environmental laws and regulations. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director (“ED”), be applied to another pre-approved SEP.

The Respondent’s signature affixed to this Agreed Order certifies that the Respondent has no prior commitment to make this contribution and that it is being contributed solely to settle this enforcement action. The Respondent shall not profit from this SEP.

B. Environmental Benefit

The groundwater stored within Texas’ minor and major aquifers is an important natural resource that is relied upon to meet the water supply demands of Texans across the state. Many factors affect the availability of this resource including drought and increased demand. This Project will provide statewide comprehensive real-time groundwater level data to Texas counties, cities, groundwater conservation districts, water supply companies, and individual well owners.

The availability of this comprehensive data will promote awareness of the effects of drought on Texas' aquifers and assist in groundwater management planning and use throughout the state.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Texas Water Development Board SEP** and shall mail the contribution with a copy of the Agreed Order to:

Texas Water Development Board
Attention: Finance
P.O. Box 13231
Austin, Texas 78711-3231

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Recognition

The Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.