

Executive Summary – Enforcement Matter – Case No. 64723
Texas Department of Transportation
RN103957627
Docket No. 2023-1261-EAQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

US 183 Section 9, located east of U.S. Highway 183 from Farm-to-Market Road 620 to Avery Ranch Boulevard in Austin and Austin extraterritorial jurisdiction, Williamson County

Type of Operation:

Construction site

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: January 3, 2025

Comments Received: No

Penalty Information

Total Penalty Assessed: \$42,500

Amount Deferred for Expedited Settlement: \$8,500

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project (“SEP”) Conditional Offset: \$34,000

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

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: Yes

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: August 14, 2023

Date(s) of NOE(s): August 18, 2023

Executive Summary – Enforcement Matter – Case No. 64723
Texas Department of Transportation
RN103957627
Docket No. 2023-1261-EAQ-E

Violation Information

1. Failed to submit certification by a Texas Licensed Professional Engineer that the permanent Best Management Practices ("BMPs") were constructed as designed within 30 days of Site completion. Specifically, the BMPs were not certified by the December 31, 2005 due date [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 11-03072101, Standard Conditions No. 13].

2. Failed to comply with conditions of an approved WPAP. Specifically, the Respondent was not maintaining and inspecting the permanent BMPs as required. Additionally, the maintenance and repairs were not being done on the maintenance ramp, sediment pond, and filtration pond. Also, the safety gates were open and not secured [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 11-03072101, Standard Conditions No. 14].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

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

2. The Order will also require the Respondent to:

a. Within 30 days, develop and implement procedures and conduct employee training to ensure that:

i. The permanent BMPs are maintained and inspected as required.

ii. The safety gates are closed and secured when not in use.

iii. The maintenance and repairs are done on the maintenance ramp, sediment pond, and filtration pond as needed.

b. Within 45 days, submit written certification to demonstrate compliance with a.

c. Within 60 days, conduct repairs on the maintenance ramp, sediment pond, and filtration pond.

d. Within 75 days, submit written certification to demonstrate compliance with c.

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Docket No. 2023-1261-EAQ-E

Contact Information

TCEQ Attorney: N/A

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

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: Omar DeLeon, Director of Maintenance, Texas Department of Transportation, 7301 IH-35 North, Austin, Texas 78753

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	21-Aug-2023	Screening	30-Aug-2023	EPA Due	
	PCW	29-Sep-2023				

RESPONDENT/FACILITY INFORMATION

Respondent	Texas Department of Transportation				
Reg. Ent. Ref. No.	RN103957627				
Facility/Site Region	11-Austin	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	64723	No. of Violations	2
Docket No.	2023-1261-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Harley Hobson
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$42,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$6,694
Estimated Cost of Compliance: \$12,405
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$42,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$42,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$42,500
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DEFERRAL	20.0%	Reduction	Adjustment	-\$8,500
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$34,000
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Screening Date	30-Aug-2023	Docket No.	2023-1261-EAQ-E	PCW
Respondent	Texas Department of Transportation			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	64723			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN103957627			
Media	Edwards Aquifer			
Enf. Coordinator	Harley Hobson			

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-Aug-2023 Respondent Texas Department of Transportation Case ID No. 64723 Reg. Ent. Reference No. RN103957627 Media Edwards Aquifer Enf. Coordinator Harley Hobson	Docket No. 2023-1261-EAQ-E <div style="border: 1px solid black; padding: 2px;"> Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 11-03072101, Standard Conditions No. 13 </div> <div style="border: 1px solid black; padding: 2px; margin-top: 5px;"> Violation Description Failed to submit certification by a Texas Licensed Professional Engineer that the permanent Best Management Practices ("BMPs") were constructed as designed within 30 days of Site completion. Specifically, the BMPs were not certified by the December 31, 2005 due date. </div>	PCW <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>
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Violation Number	1						
Base Penalty							
							\$25,000

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 20.0%

Matrix Notes	100% of the rule requirements were not met.
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Adjustment		\$20,000
		\$5,000

Violation Events

Number of Violation Events	1	6451	Number of violation days
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	daily				Violation Base Penalty	\$5,000
	weekly					
	monthly					
	quarterly					
	semiannual					
	annual					
	single event	x				

One single event is recommended.

Good Faith Efforts to Comply

0.0%			Reduction	\$0
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer		
Extraordinary				
Ordinary				
N/A	x			

Notes	The Respondent does not meet the good faith criteria for this violation.
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Violation Subtotal		\$5,000
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Economic Benefit (EB) for this violation

Statutory Limit Test	
Estimated EB Amount	\$5,104
Violation Final Penalty Total	\$5,000
This violation Final Assessed Penalty (adjusted for limits)	
\$5,000	

Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 64723
Reg. Ent. Reference No. RN103957627
Media Edwards Aquifer
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs	\$2,155	31-Dec-2005	30-Aug-2023	17.67	\$2,949	\$2,155	\$5,104
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated Avoided cost to submit certification by a Texas Licensed Professional Engineer that the permanent BMPs were constructed as designed. The Date Required is the date the certification was due, and the Final Date is the screening date.

Approx. Cost of Compliance

\$2,155

TOTAL

\$5,104

Screening Date 30-Aug-2023 Respondent Texas Department of Transportation Case ID No. 64723 Reg. Ent. Reference No. RN103957627 Media Edwards Aquifer Enf. Coordinator Harley Hobson	Docket No. 2023-1261-EAQ-E Policy Revision 5 (January 28, 2021) PCW Revision February 11, 2021	PCW
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Violation Number	2		
Rule Cite(s)	30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer WPAP No. 11-03072101, Standard Conditions No. 14		
Violation Description	Failed to comply with conditions of an approved WPAP. Specifically, the Respondent was not maintaining and inspecting the permanent BMPs as required. Additionally, the maintenance and repairs were not being done on the maintenance ramp, sediment pond, and filtration pond. Also, the safety gates were open and not secured.		

Base Penalty	\$25,000
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>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				
	Potential	x			Percent 30.0%

>> 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.
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Adjustment	\$17,500
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	\$7,500
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Violation Events

Number of Violation Events	5		448	Number of violation days
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	daily	weekly	monthly	quarterly	semiannual	annual	single event	
				x				Violation Base Penalty \$37,500

Five quarterly events are recommended from the June 8, 2022 initial investigation date to the August 30, 2023 screening date.

Good Faith Efforts to Comply

	0.0%			Reduction	\$0
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer			
Extraordinary					
Ordinary					
N/A	x				
Notes	The Respondent does not meet the good faith criteria for this violation.				

Violation Subtotal	\$37,500
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Economic Benefit (EB) for this violation

Estimated EB Amount	\$1,590	Statutory Limit Test
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Violation Final Penalty Total	\$37,500
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This violation Final Assessed Penalty (adjusted for limits)	\$37,500
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Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 64723
Reg. Ent. Reference No. RN103957627
Media Edwards Aquifer
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	\$10,000	8-Jun-2022	8-Sep-2024	2.25	\$75	\$1,503	\$1,578
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	\$250	14-Aug-2023	9-Aug-2024	0.99	\$12	n/a	\$12
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated Engineering/Construction cost to conduct repairs on the maintenance ramp, sediment pond, and filtration pond. The Date Required is the initial investigation date, and the Final Date is the estimated date of compliance.

Estimated Training/Sampling cost to develop and implement procedures and conduct employee training to ensure that the permanent BMPs are maintained and inspected as required, that the safety gates are closed and secured when not in use, and that the maintenance and repairs are done on the maintenance ramp, sediment pond, and filtration pond as needed. The Date Required is the investigation date, and the Final Date is the estimated 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

\$10,250

TOTAL

\$1,590



Compliance History Report

Compliance History Report for CN600803456, RN103957627, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN600803456, Texas Department of Transportation
Classification: SATISFACTORY **Rating:** 1.66
Regulated Entity: RN103957627, US 183 SECTION 9 **Classification:** SATISFACTORY **Rating:** 8.00
Complexity Points: 1 **Repeat Violator:** NO
CH Group: 09 - Construction
Location: East of United States Highway 183 from Farm-to-Market Road 620 to Avery Ranch Boulevard in Austin and Austin extraterritorial jurisdiction, Williamson County, Texas
TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

EDWARDS AQUIFER PERMIT 11-03072101

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

Date Compliance History Report Prepared: February 28, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 28, 2019 to February 28, 2024

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

Name: Harley Hobson

Phone: (512) 239-1337

Site and Owner/Operator History:

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

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

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

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

N/A

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

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

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TEXAS DEPARTMENT OF
TRANSPORTATION
RN103957627

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

AGREED ORDER DOCKET NO. 2023-1261-EAQ-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 the Texas Department of Transportation (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a construction site located east of United States Highway 183 from Farm-to-Market Road 620 to Avery Ranch Boulevard in Austin and Austin extraterritorial jurisdiction in Williamson County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$42,500 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The amount of \$8,500 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, \$34,000 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.

II. ALLEGATIONS

During a record review for the Site conducted on August 14, 2023, an investigator documented that the Respondent:

1. Failed to submit certification by a Texas Licensed Professional Engineer that the permanent Best Management Practices ("BMPs") were constructed as designed within 30 days of Site completion, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 11-03072101, Standard Conditions No. 13. Specifically, the BMPs were not certified by the December 31, 2005 due date.
2. Failed to comply with conditions of an approved WPAP, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 11-03072101, Standard Conditions No. 14. Specifically, the Respondent was not maintaining and inspecting the permanent BMPs as required. Additionally, the maintenance and repairs were not being done on the maintenance ramp, sediment pond, and filtration pond. Also, the safety gates were open and not secured.

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: Texas Department of Transportation, Docket No. 2023-1261-EAQ-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 \$34,000 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. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, develop and implement procedures and conduct employee training to ensure that:
 - i. The permanent BMPs are maintained and inspected as required.
 - ii. The safety gates are closed and secured when not in use.
 - iii. The maintenance and repairs are done on the maintenance ramp, sediment pond, and filtration pond as needed.
 - b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a, in accordance with Ordering Provision No. 3.d.
 - c. Within 60 days after the effective date of this Order, conduct repairs on the maintenance ramp, sediment pond, and filtration pond, in accordance with EAPP No. 11-03072101, Standard Conditions No. 14.
 - d. Within 75 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.c. The certification shall be signed by the Respondent and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. 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.
6. 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. Extension requests shall be sent to the Enforcement Division at the address listed above.
7. 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.
8. 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.

9. 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.

Texas Department of Transportation
DOCKET NO. 2023-1261-EAQ-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

For the Executive Director

1/31/2025

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.

DocuSigned by:
Omar X. De Leon, P.E.

Signature

12/4/2024

Date

Omar X. De Leon, P.E.

Director of Maint.

Name (Printed or typed)
Authorized Representative of
Texas Department of Transportation

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: 2023-1261-EAQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Texas Department of Transportation
Payable Penalty Amount:	\$34,000
SEP Offset Amount:	\$34,000
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 Williamson County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset 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.