Executive Summary – Enforcement Matter – Case No. 65050
Soto Sand and Gravel, Inc.
RN107089690
Docket No. 2023-1645-WQ-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
WQ
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
Soto Sand and Gravel Pit, located at the intersection of Roaring Springs Drive and Cascade Drive, El Paso, El Paso 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: June 21, 2024
Comments Received: No

Penalty Information

Total Penalty Assessed: $22,500
Amount Deferred for Expedited Settlement: $4,500
Total Paid to General Revenue: $500
Total Due to General Revenue: $17,500
Payment Plan: 35 payments of $500 each
Compliance History Classifications:
Person/CN - Unclassified
Site/RN - Unclassified
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: October 10, 2023
Date(s) of NOE(s): November 7, 2023

Executive Summary – Enforcement Matter – Case No. 65050
Soto Sand and Gravel, Inc.
RN107089690
Docket No. 2023-1645-WQ-E

Violation Information

Failed to maintain authorization to discharge stormwater associated with industrial activities. Specifically, authorization under Texas Pollutant Discharge Elimination System ("TPDES") Mutli-Sector General Permit ("MSGP") No. TXR05BZ50 expired on August 14, 2021, and the Respondent continued to operate [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

i. Develop and implement a stormwater pollution prevention plan to comply with the requirements of TPDES MSGP No. TXR050000; and

ii. Submit a Notice of Intent through the State of Texas Environmental Electronic Reporting System to obtain authorization to discharge stormwater.

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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Madison Stringer, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-1126; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548
Respondent: Teodulo Soto, President, Soto Sand and Gravel, Inc., 14841 Bocalusa Avenue, El Paso, Texas 79928
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021) — *PCW Revision February 11, 2021*

DATES						
	Assigned	13-Nov-2023				
	PCW	23-Nov-2023	**Screening**	20-Nov-2023	**EPA Due**	

RESPONDENT/FACILITY INFORMATION

Respondent	Soto Sand and Gravel, Inc.		
Reg. Ent. Ref. No.	RN107089690		
Facility/Site Region	6-El Paso	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	65050	**No. of Violations**	1
Docket No.	2023-1645-WQ-E	**Order Type**	1660
Media Program(s)	Water Quality	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Madison Stringer
		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*** **$22,500**

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*** **$0**

Economic Benefit **0.0%** Enhancement* — ***Subtotal 6*** **$0**

Total EB Amounts $13
Estimated Cost of Compliance #NAME?

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — ***Final Subtotal*** **$22,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** — ***Adjustment*** **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$22,500**

STATUTORY LIMIT ADJUSTMENT — ***Final Assessed Penalty*** **$22,500**

DEFERRAL **20.0%** Reduction — ***Adjustment*** **-$4,500**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$18,000**

Screening Date 20-Nov-2023 **Docket No.** 2023-1645-WQ-E **PCW**

Respondent Soto Sand and Gravel, Inc.

Case ID No. 65050

Reg. Ent. Reference No. RN107089690

Media Water Quality

Enf. Coordinator Madison Stringer

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Compliance History Worksheet

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

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgments or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

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 20-Nov-2023 **Docket No.** 2023-1645-WQ-E **PCW**

Respondent Soto Sand and Gravel, Inc. *Policy Revision 5 (January 28, 2021)*

Case ID No. 65050 *PCW Revision February 11, 2021*

Reg. Ent. Reference No. RN107089690

Media Water Quality

Enf. Coordinator Madison Stringer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)

Violation Description Failed to maintain authorization to discharge stormwater associated with industrial activities. Specifically, authorization under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR05BZ50 expired August 14, 2021, and the Respondent continued to operate.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR	Harm			
Release	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: 9 — 738 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $22,500

Nine quarterly events are recommended from the permit application grace period end date (November 12, 2021) to the screening date (November 20, 2023).

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 $22,500

Economic Benefit (EB) for this violation

Estimated EB Amount $13

Statutory Limit Test

Violation Final Penalty Total $22,500

This violation Final Assessed Penalty (adjusted for limits) $22,500

Economic Benefit Worksheet

Respondent Soto Sand and Gravel, Inc.
Case ID No. 65050
Reg. Ent. Reference No. RN107089690
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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	$100	12-Nov-2021	5-Jul-2024	2.65	$13	n/a	$13
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated Permit Costs to develop and implement a stormwater pollution prevention plan, submit a Notice of Intent, and obtain authorization to discharge stormwater associated with industrial activities under the TPDES MSGP No. TXR050000. The Date Required is the end of the permit application renewal grace period 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	$100				**TOTAL**	$13	

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.

Compliance History Report

Compliance History Report for CN604509992, RN107089690, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN604509992, Soto Sand and Gravel, Inc. **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN107089690, SOTO SAND AND GRAVEL PIT **Classification:** UNCLASSIFIED **Rating:** -----

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

CH Group: 04 - Mining

Location: located at the intersection of Roaring Springs Drive and Cascade Drive, El Paso, El Paso County, Texas

TCEQ Region: REGION 06 - EL PASO

ID Number(s):
AGGREGATE PRODUCTION OPERATION REGISTRATION
AP0002069

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

Date Compliance History Report Prepared: February 05, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 05, 2019 to February 05, 2024

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

Name: Madison Stringer **Phone:** (512) 239-1126

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 May 15, 2020 (1644501)

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	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
SOTO SAND AND GRAVEL, INC.	**§**	
RN107089690	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2023-1645-WQ-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Soto Sand and Gravel, 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 the intersection of Roaring Springs Drive and Cascade Drive in El Paso, El Paso 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 chs. 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 $22,500 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid $500 of the penalty and $4,500 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.

   The remaining amount of $17,500 of the undeferred penalty shall be paid in 35 monthly payments of $500 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If the Respondent fails to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. The Respondent's failure to meet the

payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and 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.

II. ALLEGATIONS

During an investigation at the Site conducted on October 10, 2023, an investigator documented that the Respondent failed to maintain authorization to discharge stormwater associated with industrial activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c). Specifically, authorization under Texas Pollutant Discharge Elimination System ("TPDES") Mutli-Sector General Permit ("MSGP") No. TXR05BZ50 expired on August 14, 2021, and the Respondent continued to operate.

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: Soto Sand and Gravel, Inc., Docket No. 2023-1645-WQ-E" to:

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

2. The Respondent shall undertake the following technical requirements:

a. Within 30 days of the effective date of this Order:

i. Develop and implement a stormwater pollution prevention plan to comply with the requirements of TPDES Multi-Sector General Permit No. TXR050000; and

ii. Submit a Notice of Intent through the State of Texas Environmental Electronic Reporting System to obtain authorization to discharge stormwater.

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. 2.a. 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
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1212

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 Site 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. Extension requests shall be sent to the Enforcement Division at the address listed above.

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. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____	_____
For the Commission	Date
_____	6/28/2024
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.

_____	5-29-2024
Signature	Date
Teodulo Soto	President
Name (Printed or typed) Authorized Representative of Soto Sand and Gravel, 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.