

Executive Summary – Enforcement Matter – Case No. 65390
TATUM EXCAVATING COMPANY, INC.
RN111037412
Docket No. 2024-0262-WQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

McCann Pit, located approximately 0.5 mile southwest from the intersection of west Farm-to-Market Road 2148 and Highway 67, Texarkana, Bowie County

Type of Operation:

Aggregate production operation ("APO")

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda

Texas Register Publication Date: October 4, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$28,400

Amount Deferred for Expedited Settlement: \$5,680

Total Paid to General Revenue: \$9,363

Total Due to General Revenue: \$13,357

Payment Plan: two payments of \$4,182 and one payment of \$4,993 each

Compliance History Classifications:

Person/CN - High

Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: \$9,762

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): October 6, 2023

Complaint Information: Alleged concerns regarding a pit discharging sediment off-site.

Date(s) of Investigation: October 17, 2023 through October 19, 2023

Date(s) of NOE(s): November 28, 2023

Executive Summary – Enforcement Matter – Case No. 65390
TATUM EXCAVATING COMPANY, INC.
RN111037412
Docket No. 2024-0262-WQ-E

Violation Information

1. Failed to maintain authorization to discharge stormwater associated with industrial activities. Specifically, the authorization under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR05EP48 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)].

2. Failed to renew the APO Registration annually as regulated activities continued. Specifically, APO Registration No. AP0003286 expired on May 6, 2021, and the Respondent continued to operate [30 TEX. ADMIN. CODE § 342.25(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

a. By October 25, 2023, the Respondent developed and implemented a stormwater pollution prevention plan to comply with the requirements of TPDES General Permit No. TXR050000, submitted a Notice of Intent through the State of Texas Environmental Electronic Reporting System, and obtained authorization to discharge stormwater associated with industrial activities through TPDES MSGP No. TXR05GG44; and

b. By October 26, 2023, the Respondent registered the Site as an APO through the state electronic reporting system under APO Registration No. AP0003887.

Technical Requirements:

N/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: Troy Nipper, President, TATUM EXCAVATING COMPANY, INC., 2416 South Lake Drive, Texarkana, Texas, 75501

S. Ross Sarine, Vice President, TATUM EXCAVATING COMPANY, INC., 2416 South Lake Drive, Texarkana, Texas, 75501

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	4-Dec-2023	Screening	14-Dec-2023	EPA Due	
	PCW	12-Feb-2024				

RESPONDENT/FACILITY INFORMATION	
Respondent	TATUM EXCAVATING COMPANY, INC. PCW No. 1 of 2
Reg. Ent. Ref. No.	RN111037412
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	65390	No. of Violations	1
Docket No.	2024-0262-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	\$20,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-8.0% Adjustment	Subtotals 2, 3, & 7	-\$1,600
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Notes: Reduction for High Performer Classification, and enhancement for one NOV with dissimilar violations.

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	-\$5,000
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$10
Estimated Cost of Compliance	\$100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,400
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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	\$13,400
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,400
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,680
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$10,720
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Screening Date 14-Dec-2023

Docket No. 2024-0262-WQ-E

PCW

Respondent TATUM EXCAVATING COMPANY, INC. PCW No. 1 of 2

Policy Revision 5 (January 28, 2021)

Case ID No. 65390

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111037412

Media Water Quality

Enf. Coordinator Madison Stringer

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	1	2%
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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification, and enhancement for one NOV with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -8%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -8%

Screening Date 14-Dec-2023 **Docket No.** 2024-0262-WQ-E **PCW**
Respondent TATUM EXCAVATING COMPANY, INC. PCW No. 1 of 2 *Policy Revision 5 (January 28, 2021)*
Case ID No. 65390 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN111037412
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, the authorization under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR05EP48 expired on August 14, 2021, and the Respondent continued to operate.

Base Penalty \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

100% of the rule requirement was not met.

Adjustment \$22,500

\$2,500

Violation Events

Number of Violation Events 8 Number of violation days 712

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$20,000

Eight quarterly events are recommended from the permit renewal grace period end date (November 12, 2021) to the date of compliance (October 25, 2023).

Good Faith Efforts to Comply 25.0% Reduction \$5,000

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		

Notes The Respondent achieved compliance on October 25, 2023.

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$10 **Violation Final Penalty Total** \$13,400

This violation Final Assessed Penalty (adjusted for limits) \$13,400

Economic Benefit Worksheet

Respondent TATUM EXCAVATING COMPANY, INC. PCW No. 1 of 2
Case ID No. 65390
Reg. Ent. Reference No. RN111037412
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$100	12-Nov-2021	25-Oct-2023	1.95	\$10	n/a	\$10
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost 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 TPDES MSGP No. TXR05GG44. The Date Required is the end of the permit renewal grace period 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 \$100

TOTAL \$10



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	15-Nov-1900	Screening	14-Dec-2023	EPA Due	
	PCW	12-Feb-2024				

RESPONDENT/FACILITY INFORMATION	
Respondent	TATUM EXCAVATING COMPANY, INC. PCW No. 2 of 2
Reg. Ent. Ref. No.	RN111037412
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION					
Enf./Case ID No.	65390	No. of Violations	1		
Docket No.	2024-0262-WQ-E	Order Type	1660		
Media Program(s)	Aggregate Production Operation	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Madison Stringer		
		EC's Team	Enforcement Team 1		
Admin. Penalty \$ Limit Minimum	\$5,000	Maximum	\$20,000	Violation Maximum	\$40,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-8.0% Adjustment	Subtotals 2, 3, & 7	-\$480
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Notes: Reduction for High Performer Classification, and enhancement for one NOV with dissimilar violations.

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	-\$1,500
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1,330
 Estimated Cost of Compliance: \$2,212
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,020
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OTHER FACTORS AS JUSTICE MAY REQUIRE	31.0% Adjustment	\$1,248
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with the violation.

Final Penalty Amount	\$5,268
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$15,000
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Notes: The final assessed penalty has been adjusted to meet the statutory requirements of Tex. Water Code § 28A.102.

DEFERRAL	20.0% Reduction Adjustment	-\$3,000
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$12,000
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Screening Date 14-Dec-2023 Docket No. 2024-0262-WQ-E

PCW

Respondent TATUM EXCAVATING COMPANY, INC. PCW No. 2 of 2

Policy Revision 5 (January 28, 2021)

Case ID No. 65390

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111037412

Media Aggregate Production Operation

Enf. Coordinator Madison Stringer

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	1	2%
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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification, and enhancement for one NOV with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -8%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -8%

Screening Date 14-Dec-2023 **Docket No.** 2024-0262-WQ-E **PCW**
Respondent TATUM EXCAVATING COMPANY, INC. PCW No. 2 of 2 *Policy Revision 5 (January 28, 2021)*
Case ID No. 65390 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN111037412
Media Aggregate Production Operation
Enf. Coordinator Madison Stringer

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 342.25(d)
Violation Description Failed to renew the aggregate production operation ("APO") registration annually as regulated activities continued. Specifically, APO Registration No. AP0003286 expired on May 6, 2021 and the Respondent continued to operate.

Base Penalty \$20,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

OR	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10.0%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$18,000

\$2,000

Violation Events

Number of Violation Events 3 903 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$6,000

Three single events are recommended.

Good Faith Efforts to Comply 25.0% Reduction \$1,500

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		

Notes The Respondent achieved compliance on October 26, 2023.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$1,330 **Violation Final Penalty Total** \$5,268

This violation Final Assessed Penalty (adjusted for limits) \$15,000

Economic Benefit Worksheet

Respondent TATUM EXCAVATING COMPANY, INC. PCW No. 2 of 2
Case ID No. 65390
Reg. Ent. Reference No. RN111037412
Media Aggregate Production Operation
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	\$1,106	6-May-2022	26-Oct-2023	1.47	\$82	n/a	\$82
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated Permit Costs to register the Site as an APO. Date Required is the most recent registration renewal 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	\$1,106	6-May-2021	26-Oct-2023	2.47	\$142	\$1,106	\$1,248
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to renew the APO registration. The Date Required is the date the initial registration renewal was due, and the Final Date is the date of compliance.

Approx. Cost of Compliance

\$2,212

TOTAL

\$1,330

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 CN600972277, RN111037412, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN600972277, TATUM EXCAVATING COMPANY, INC. **Classification:** HIGH **Rating:** 0.00
Regulated Entity: RN111037412, MCCANN PIT **Classification:** UNCLASSIFIED **Rating:** -----
Complexity Points: 5 **Repeat Violator:** NO
CH Group: 09 - Construction
Location: located approximately 0.5 miles southwest from the intersection of West Farm-to-Market Road 2148 and Highway 67, Texarkana, Bowie County, Texas
TCEQ Region: REGION 05 - TYLER
ID Number(s):
STORMWATER PERMIT TXR05GG44 **AGGREGATE PRODUCTION OPERATION REGISTRATION AP0003887**

Compliance History Period: September 01, 2018 to August 31, 2023 **Rating Year:** 2023 **Rating Date:** 09/01/2023
Date Compliance History Report Prepared: May 29, 2024
Agency Decision Requiring Compliance History: Enforcement
Component Period Selected: May 29, 2019 to May 29, 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? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

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

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

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
Item 1 May 27, 2021 (1723045)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):
A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 05/13/2024 (1976882)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TXR150000 PERMIT
Description: Failure to provide records per TPDES General Permit TXR050000, Part II.B.1.

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
TATUM EXCAVATING COMPANY,
INC.
RN111037412

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2024-0262-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 TATUM EXCAVATING COMPANY, INC. (the "Respondent") under the authority of TEX. WATER CODE chs. 7, 26, and 28A. 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 ("APO") located approximately 0.5 miles southwest from the intersection of West Farm-to-Market Road 2148 and Highway 67 in Texarkana, Bowie County, Texas (the "Site"). The Respondent is a responsible party as defined in TEX. WATER CODE § 28A.001(6), because it is an operator as defined in TEX. WATER CODE § 28A.001(4), of an APO. Aggregates are being or have been removed from the Site's earth. Therefore, the Site is an APO as defined in TEX. WATER CODE § 28A.001(1). 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 28A 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 \$28,400 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$9,363 of the penalty and \$5,680 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 \$13,357 of the undeferred penalty shall be paid in two monthly payments of \$4,182 and one final payment of \$4,993. 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.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Site:
 - a. By October 25, 2023, the Respondent developed and implemented a stormwater pollution prevention plan to comply with the requirements of Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR050000, submitted a Notice of Intent through the State of Texas Environmental Electronic Reporting System, and obtained authorization to discharge stormwater associated with industrial activities through TPDES Multi-Sector General Permit ("MSGP") No. TXR05GG44.
 - b. By October 26, 2023, the Respondent registered the Site as an APO through the state electronic reporting system under APO Registration No. AP0003887.

II. ALLEGATIONS

During an investigation at the Site conducted from October 17, 2023 through October 19, 2023, an investigator documented that the Respondent:

1. 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, the authorization under TPDES MSGP No. TXR05EP48 expired on August 14, 2021, and the Respondent continued to operate.

2. Failed to renew the APO Registration annually as regulated activities continued, in violation of 30 TEX. ADMIN. CODE § 342.25(d). Specifically, APO Registration No. AP0003286 expired on May 6, 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: TATUM EXCAVATING COMPANY, INC., Docket No. 2024-0262-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. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used.

The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



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.



Signature

1/10/25

Date

S. ROSS SAPINE

Name (Printed or typed)
Authorized Representative of
TATUM EXCAVATING COMPANY, INC.

Vice President

Title

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

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.