

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0191-AIR-E **TCEQ ID:** RN105147524 **CASE NO.:** 32613
RESPONDENT NAME: Scott Newland dba North Crete Services

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Concrete Batch Plant North Crete Services, 3920 Farm-to-Market Road 2879, Longview, Harrison County</p> <p>TYPE OF OPERATION: Concrete batch plant</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on December 6, 2006, alleging the company was discarding waste material into Indian Creek. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 27, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2134; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Scott Newland, Owner, North Crete Services, 4723 State Highway 154 East, Gilmer, Texas 75845 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: December 6, 2006</p> <p>Date of Investigations Relating to this Case: December 13, 2006 and February 26, 2007</p> <p>Date of NOEs Relating to this Case: January 31, 2007 and March 6, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>Failure to obtain a permit prior to the construction of a concrete batch plant [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p>Total Assessed: \$20,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$20,000</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that Mr. Newland has implemented the following corrective measures at the Plant:</p> <p>a) Ceased operations on February 26, 2007; and</p> <p>b) Obtained Air Permit No. 80899 on March 13, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

DATES	Assigned	5-Feb-2007	Screening	6-Feb-2007	EPA Due	
	PCW	28-Mar-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Scott Newland dba North Crete Services
Reg. Ent. Ref. No.	RN105147524
Facility/Site Region	5 - Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	32613	No. of Violations	1
Docket No.	2007-0191-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Suzanne Walrath
Multi-Media		EC's Team	4
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$20,000
---	-------------------	-----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	2% Enhancement	Subtotals 2, 3, & 7	\$400
---------------------------	----------------	--------------------------------	--------------

Notes: The Respondent has received one NOV for violations which were not same or similar.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
------------------------------------	--------------	-------------------	------------

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria pursuant to Tex. Water Code § 7.052(b) which requires a mandatory penalty of \$10,000 per day.

	0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$31	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$2,500		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$20,000
-----------------------------	-----------------------	-----------------

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

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$20,000
-----------------------------	-----------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$20,000
-----------------------------------	-------------------------------	-----------------

DEFERRAL	0% Reduction	Adjustment	\$0
-----------------	--------------	-------------------	------------

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Pursuant to Tex. Water Code § 7.052(b), a concrete batch plant operating without a permit is penalized \$10,000 per day for each day that a continuing violation occurs.

PAYABLE PENALTY	\$20,000
------------------------	-----------------

Screening Date 6-Feb-2007

Docket No. 2007-0191-AIR-E

PCW

Respondent Scott Newland dba North Crete Services

Policy Revision 2 (September 2002)

Case ID No. 32613

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN105147524

Media [Statute] Air Quality

Enf. Coordinator Suzanne Walrath

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
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%
<i>Please Enter Yes or No</i>			
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)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has received one NOV for violations which were not same or similar.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 2%

Screening Date 6-Feb-2007

Docket No. 2007-0191-AIR-E

PCW

Respondent Scott Newland dba North Crete Services

Policy Revision 2 (September 2002)

Case ID No. 32613

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN105147524

Media [Statute] Air Quality

Enf. Coordinator Suzanne Walrath

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 116.110(a), Tex. Health and Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description Failed to obtain a permit prior to the construction of a concrete batch plant.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

OR

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="100%"/>

Matrix Notes

The respondent failed to meet 100% of the rule requirements. Pursuant to Tex. Water Code § 7.052(b), a concrete batch plant operating without a permit is penalized \$10,000 per day for each day that a continuing violation occurs.

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

mark only one with an x

Violation Base Penalty

Two single events are recommended as documented by the investigations on 12/13/06 and 2/26/07.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Scott Newland dba North Crete Services
Case ID No.: 32613
Reg. Ent. Reference No.: RN105147524
Media: Air Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$2,500	13-Dec-2006	13-Mar-2007	0.2	\$31	n/a	\$31
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

These are estimated costs to obtain a permit, beginning on the date of inspection, and ending on the date the permit was obtained.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

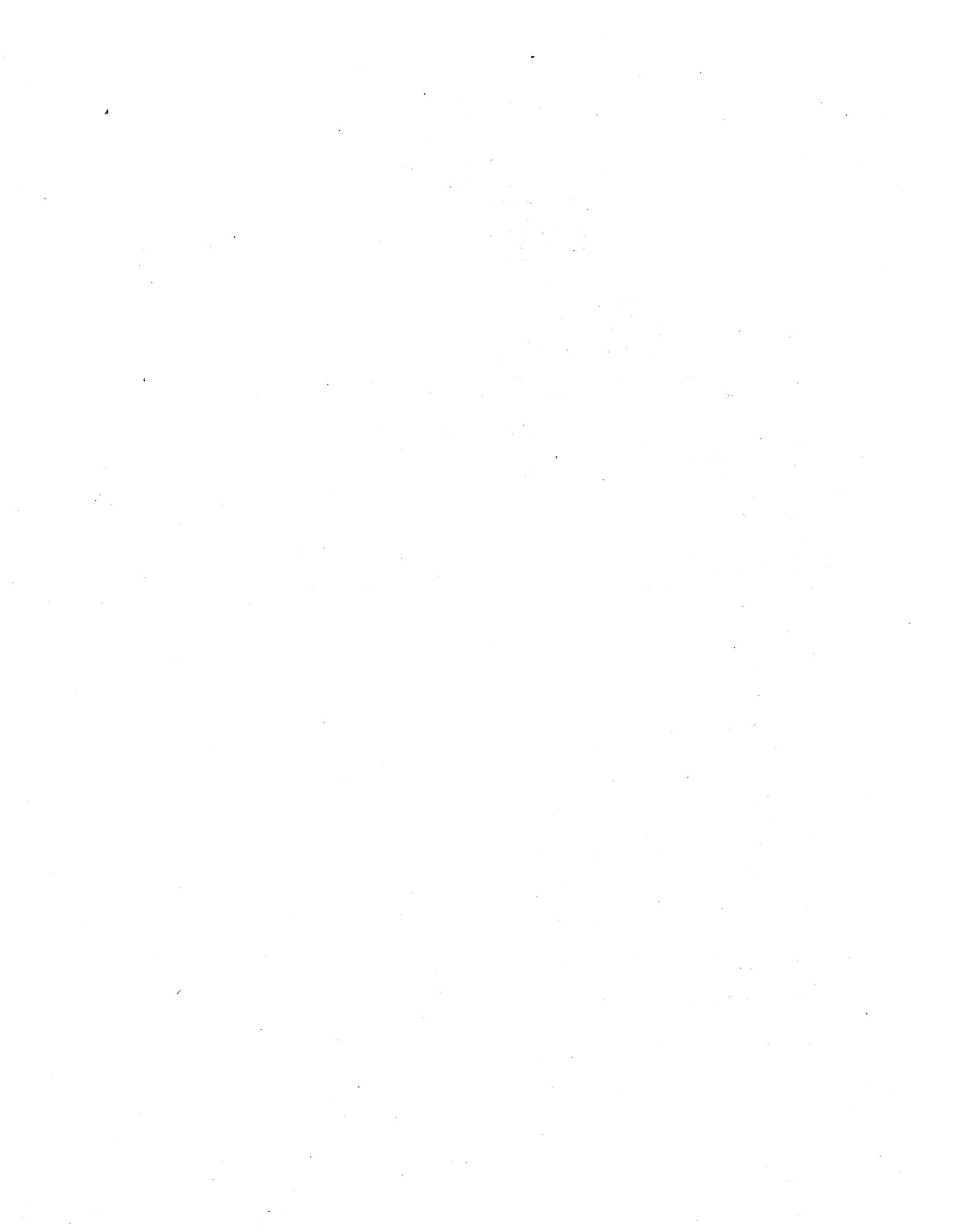
Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$31



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SCOTT NEWLAND DBA NORTH
CRETE SERVICES
RN105147524

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0191-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Scott Newland dba North Crete Services ("Mr. Newland") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Newland, appear before the Commission and together stipulate that:

1. Mr. Newland owns and operates a concrete batch plant at 3920 Farm-to-Market Road 2879, Longview, Harrison County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Mr. Newland agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Newland is subject to the Commission's jurisdiction.
4. Mr. Newland received notice of the violations alleged in Section II ("Allegations") on or about February 5, 2007, and March 11, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Newland of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty Thousand Dollars (\$20,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Newland has paid the Twenty Thousand Dollar (\$20,000) administrative penalty.

7. 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.
8. The Executive Director of the TCEQ and Mr. Newland have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Newland has implemented the following corrective measures at the Plant:
 - a. Ceased operations on February 26, 2007; and
 - b. Obtained Air Permit No. 80899 on March 13, 2007.
10. 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 Mr. Newland has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, Mr. Newland is alleged to have failed to obtain a permit prior to the construction of a concrete batch plant, in violation of 30 TEX. ADMIN. CODE § 116.110(a), TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during investigations conducted on December 13, 2006, and February 26, 2007.

III. DENIALS

Mr. Newland generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Newland pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Newland's compliance with all the terms and conditions set forth in this Agreed 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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Scott Newland dba North Crete Services, Docket No. 2007-0191-AIR-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Newland. Mr. Newland is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Newland in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed 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.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Newland, or three days after the date on which the Commission mails notice of the Order to Mr. Newland, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

8/27/07

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

5-19-07

Date

Scott Newland

Name (Printed or typed)
Authorized Representative of
Scott Newland dba North Crete Services

Owner

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

