EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2004-1862-WQ-E **TCEQ ID:** RN101205383 **CASE NO.:** 21941

RESPONDENT NAME: Classic Marble Company

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	X WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Classic Marble, 16501 Bratton Lane, Austin, Travis County

TYPE OF OPERATION: Manufactures cut stone products

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 22, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Kimberly Morales, Enforcement Division, Enforcement Section III, MC R-12, (713) 422-8938; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

TCEQ Field Investigator: Mr. Robert Perales, Austin Regional Office, MC R-11, (512) 339-2929

Respondent: Mr. Rudy Sartena, President, Classic Marble Company, 16501 Bratton Lane, Austin, Texas 78728

Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT'S NAME: Classic Marble Company
DOCKET NO.: 2004-1862-WQ-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** October 28, 2004 **Date of NOE Relating to this Case:** October 29, 2004, (NOE) **Background Facts:** This was a routine record review. One violation was documented. **WATER** Failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)].	**Total Assessed:** $1,050 **Total Deferred:** $210 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $840 **Site Compliance History Classification:** __ High _X_ Avg. __ Poor **Person Compliance History Classification:** __ High _X_ Avg. __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order: i. Develop and implement a storm water pollution prevention plan; and ii. Submit an administratively complete Notice of Intent for authorization to discharge under TPDES general permit TXR050000. b. Within 90 days after the effective date of this Agreed Order, submit written certification that either the Storm Water Permit has been issued or that operations have ceased until permit authorization has been obtained.

Attachment: Site Compliance History

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision February 17, 2005*

TCEQ

DATES							
Assigned	08-Nov-2004						
PCW	08-Feb-2004	Screening	18-Nov-2004	Priority Due	07-Jan-2005	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Classic Marble Company		
Reg. Ent. Ref. No.	RN101205383		
Additional ID No(s).			
Facility/Site Region	11-Austin	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	21941	No. of Violations	1
Docket No.	2004-1862-WQ-E	Order Type	1660
Case Priority	3	Enf. Coordinator	Lawrence King
Media Program(s)	Water Quality	EC's Team	Enforcement Team 1
Multi-Media			
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement *Subtotals 2, 3, & 7* $50

Notes: The penalty is increased due to a prior NOV with same or similar violations.

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 a small x)*

Notes: The Respondent is not yet in compliance.

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

**Capped at the Total EB $ Amount*

Total EB Amounts	$305
Approx. Cost of Compliance	$2,000

SUM OF SUBTOTALS 1-7 Final Subtotal $1,050

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

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

Notes:

Final Penalty Amount $1,050

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $1,050

DEFERRAL 20% Reduction Adjustment -$210

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $840

Screening Date	18-Nov-2004	**Docket No.** 2004-1862-WQ-E	**PCW**
Respondent	Classic Marble Company		*Policy Revision 2 (September 2002)*
Case ID No.	21941		*PCW Revision February 17, 2005*
Reg. Ent. Reference No.	RN101205383		
Additional ID No(s).	0		
Media [Statute]	Water Quality		
Enf. Coordinator	Lawrence King		
Site Address	16501 Bratton Lane, Austin, Travis County		

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)*	1	5%
	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 judgements 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*	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%
		Please Enter Yes or No	
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) **5%**

>> 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 penalty is increased due to a prior NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **5%**

PCW

Policy Revision 2 (September 2002)
PCW Revision February 17, 2005

Screening Date	18-Nov-2004
Docket No.	2004-1862-WQ-E
Respondent	Classic Marble Company
Case ID No.	21941
Reg. Ent. Reference No.	RN101205383
Additional ID No(s).	0
Media [Statute]	Water Quality
Enf. Coordinator	Lawrence King

Violation Number 1

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

Secondary Rule Cite(s)

Violation Description The Respondent failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit, as documented during a record review conducted October 28, 2004.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: One hundred percent of the rule requirement was not met.

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events 1

mark only one (use a small x)	
daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One monthly event is recommended based on the October 28, 2004, inspection date to the November 18, 2004 screening date so that the penalty is commensurate with the situation.

Economic Benefit (EB) for this violation

Estimated EB Amount $305

Statutory Limit Test

Violation Final Penalty Total $1,050

This violation Final Assessed Penalty (adjusted for limits) $1,050

Economic Benefit Worksheet

Respondent Classic Marble Company
Case ID No. 21941
Reg. Ent. Reference No. RN101205383
Additional ID No(s). 0
Media [Statute] Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$2,000	15-Aug-2002	01-Sep-2005	3.0	$305	n/a	$305
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	The amount listed above is an estimate of the cost of submitting an NOI and preparing a storm water pollution prevention plan.						
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 $2,000

TOTAL $305

Compliance History

Customer/Respondent/Owner-Operator:	CN600276794	CLASSIC MARBLE COMPANY	Classification: AVERAGE	Rating: 1.250
Regulated Entity:	RN101205383	CLASSIC MARBLE	Classification: AVERAGE	Site Rating: 2.50
ID Number(s):	STORMWATER	PERMIT		R11STW0028
Location:	16501 BRATTON LN, AUSTIN, TX, 78728		Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	November 18, 2004			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 18, 1999 to November 18, 2004			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Lawrence King Phone: (512) 239-7037

Site Compliance History Components

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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. if Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Comments:

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1 08/11/2003 (147746)

2 11/02/2004 (339422)

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

Date: 08/12/2003 (147746)

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT IA

Description: Failure to comply with the TPDES MSIGP TXR050000 for storm water.

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**
CLASSIC MARBLE COMPANY	§	
RN101205383	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2004-1862-WQ-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 Classic Marble Company ("Classic Marble") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Classic Marble appear before the Commission and together stipulate that:

1. Classic Marble owns and operates a facility that manufactures cut-stone products at 16501 Bratton Lane in Austin, Travis County, Texas (the "Facility").

2. Classic Marble has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.

3. The Commission and Classic Marble agree that the Commission has jurisdiction to enter this Agreed Order, and that Classic Marble is subject to the Commission's jurisdiction.

4. Classic Marble received notice of the violations alleged in Section II ("Allegations") on or about November 3, 2004.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Classic Marble of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Fifty Dollars ($1,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Classic Marble has paid Eight Hundred Forty Dollars ($840) of the administrative penalty and Two Hundred Ten Dollars ($210) is deferred contingent upon Classic Marble's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Classic Marble fails to timely and satisfactorily comply with all

requirements of this Agreed Order, the Executive Director may require Classic Marble to pay all or part of the deferred 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 Classic Marble have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. 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 Classic Marble has not complied with one or more of the terms or conditions in this Agreed Order.

10. 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.

11. 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 Facility, Classic Marble is alleged to have failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a), as documented during a record review conducted on October 28, 2004.

III. DENIALS

Classic Marble generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Classic Marble pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Classic Marble'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: Classic Marble Company, Docket No. 2004-1862-WQ-E" to:

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

2. It is further ordered that Classic Marble shall undertake the following technical requirements:

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

i. Develop and implement a storm water pollution prevention plan, in accordance with the requirements of Texas Pollutant Discharge Elimination System (TPDES) general permit TXR050000; and

ii. Submit an administratively complete Notice of Intent for authorization to discharge under TPDES general permit TXR050000 to:

Texas Commission on Environmental Quality
Storm Water & General Permits Team; MC - 228
Post Office Box 13087
Austin, Texas 78711-3087

b. Within 90 days after the effective date of this Agreed Order, submit written certification that either the Storm Water Permit has been issued or that operations have ceased until permit authorization has been obtained. The written certification shall be submitted to:

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

with a copy to:

Manager, Water Section
Austin Regional Office
Texas Commission on Environmental Quality
1921 Cedar Bend Drive, Suite 150
Austin, Texas 78758

3. The provisions of this Agreed Order shall apply to and be binding upon Classic Marble. Classic Marble is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If Classic Marble fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Classic Marble's failure to comply is not a violation of this Agreed Order. Classic Marble shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Classic Marble shall notify the Executive Director within seven days after Classic Marble becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Classic Marble shall be made in writing to the Executive Director. Extensions are not effective until Classic Marble receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Classic Marble 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.

7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Classic Marble, or three days after the date on which the Commission mails notice of the Order to Classic Marble, 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

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 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: _____ Date: 11-3-06

Name (Printed or typed): RUDY SARZENO
Authorized Representative of Classic Marble Company

Title: President

For the Executive Director: _____ Date: 2/14/07

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.