EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-0663-WQ-E **TCEQ ID:** RN104900493 **CASE NO.:** 29758

RESPONDENT NAME: Texas Department of Transportation

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: TXDOT FTW CSJ 0259-03-042, 0.32 mile south of County Road 315 to 0.47 mile north of Farm-to-Market Road 199 North, Somervell County

TYPE OF OPERATION: Highway construction site

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 February 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, Enforcement Division, MC 219, (512) 239-1768

TCEQ Enforcement Coordinator: Ms. Sherronda Martin, Enforcement Division, Enforcement Section III, MC R-12, (713) 767-3680; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

TCEQ Field Investigator: Ms. Deann Russey, DFW Regional Office, MC R-04, (817) 588-5896

Respondent: Mr. Marcus N. McEndree, P.E., Erath County Area Engineer, Fort Worth District, Texas Department of Transportation, 2501 SW Loop 820, Fort Worth, Texas 76133-2300

Mr. Steven E. Simmons, P.E., Deputy Executive Director, Texas Department of Transportation, 2501 South West Loop 820, Fort Worth, Texas 76133-2300

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

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** March 2, 2006 **Date of NOE Relating to this Case:** May 23, 2006 (NOE) **Background Facts:** This was a routine investigation. Twelve violations were documented. **WATER** 1) Failed to include the permit number on the construction site notice posted on-site [30 TEX. ADMIN. CODE § 281.25(a)(4), Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000, Part III., Section D.2, and 40 CODE OF FEDERAL REGULATIONS ("CFR") PART 122]. 2) Failed to identify waste oil and other fluids expected to be stored on-site or to describe controls or best management practices to minimize pollutant discharge from these materials in the storm water pollution prevention plan ("SWP3") [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.5(b), and 40 CFR PART 122]. 3) Failed to include an adequate description of the intended schedule or sequence of major activities that will disturb soils for major portions of the site in the SWP3 [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.1(b), 40 CFR PART 122]. 4) Failed to include a copy of the TPDES General Permit in the SWP3 [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.1(i), and 40 CFR PART 122].	**Total Assessed:** $11,800 **Total Deferred:** $2,360 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $9,440 **Total Paid (Due) to General Revenue:** $0 **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	**Corrective Actions Taken:** 1) The Executive Director recognizes that on March 29, 2006 TxDOT has implemented the following corrective measures at the Site: a. Submitted a revised copy of the construction site notice to include the TPDES General permit number; b. Submitted a revised SWP3 to include identification of waste oil and other fluids expected to be used and a description of controls and best management practices to reduce pollutants from these materials; c. Submitted documentation that intended construction schedules and/or sequence of major activities disturbing soil for major portions of a site will be included in the SWP3 for future projects; d. Submitted a revised site map to include drainage patterns and approximate slopes anticipated after major grading activities and to include identification of a tributary to which the project directly discharges; e. Submitted documentation that a copy of the TPDES General Permit is included in the SWP3; f. Submitted a copy of daily work reports referencing major grading activities and temporary or permanent ceasing of construction to include in the SWP3; g. Submitted documentation that controls for waste oil and other fluids expected to be stored on-site and limiting the off-site transport of litter, construction debris and construction materials have been implemented; h. Submitted documentation demonstrating the implementation of investigations conducted within 24 hours of the end of a storm event of one-half inches; and i. Submitted documentation that the inclusion of all instances of non-compliances on the storm water inspection reports has been implemented.

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
5) Failed to identify, on the detailed site map, drainage patterns and approximate slopes anticipated after major grading activities, surface waters either adjacent or in close proximity, and the name of the receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.1(f), and 40 CFR PART 122]. 6) Failed to maintain or reference required records of major grading activities and temporarily or permanently ceasing of construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(b)(ii), and 40 CFR PART 122]. 7) Failed to conduct inspections at least every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. Specifically, the investigator documented that inspections were not conducted within 24 hours of the end of a storm event of 0.5 inches or more [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.8(a), and 40 CFR PART 122]. 8) Failed to identify instances of non-compliance on inspection reports [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.8(d), and 40 CFR PART 122]. 9) Failed to design erosion and sediment controls to retain sediment on-site to the extent practicable. Specifically, the rock check dams had reached their capacity and the silt fencing had collapsed due to the accumulation of sediment around the fencing [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(a)(i), and 40 CFR PART 122]. 10) Failed to ensure that stabilization measures initiated on portions of the site where construction had temporarily and/or permanently ceased was established. Specifically, the investigator observed significant erosion of sloped embankments due to inadequate stabilization [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(b)(iii), and 40 CFR PART 122]. 11) Failed to prevent the unauthorized discharge of sediments into water in the state. Specifically, the investigator observed significant sediment discharges into the Brazos River and two unnamed tributaries located in the area where construction activities were performed. Sediments had also entered the tributary located approximately 150 meters west and downstream of Farm-To-Market Road 199 (Tributary 1 - Georges Creek) [TEX. WATER CODE § 26.121(a)].		**Ordering Provisions:** 2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A). 3) The Order will also require the Respondent to: a. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges of sediment from the Site; b. Within 30 days after the effective date of this Agreed Order, ensure: i. Erosion and sediment controls are adequately designed to retain sediments on-site to the extent practicable; and ii. Stabilization measures are established on portions of the Site where construction has temporarily and/or permanently ceased. c. Within 45 days after the effective date of this Agreed Order, remove and properly dispose all sediment that has discharged from the Site; and d. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 3.a through 3.c. The certification required shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
12) Failed to implement controls for waste oil and other fluids expected to be stored on-site and to limit off-site transport of litter, construction debris, and construction materials. Specifically, the investigator observed open containers containing waste oil, other fluids from equipment maintenance, and a container with a yellow paint type liquid located on a pallet and/or on the ground at the staging area. Also, the investigator observed litter and debris from construction activities spread on the ground in the area located under and to the south of the newly constructed bridge and west of the Brazos River [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(a)(v), and 40 CFR PART 122].		

Attachment A
Docket Number: 2006-0663-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Texas Department of Transportation**
Payable Penalty Amount:	**Nine Thousand Four Hundred Forty Dollars ($9,440)**
SEP Amount:	**Nine Thousand Four Hundred Forty Dollars ($9,440)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up**
Location of SEP:	**Somervell County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Screening Date	12-Jun-2006	**Docket No.** 2006-0663-WQ-E	**PCW**
Respondent	Texas Department of Transportation		*Policy Revision 2 (September 2002)*
Case ID No.	29758		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN104900493		
Media [Statute]	Water Quality		
Enf. Coordinator	Sherronda Martin		

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	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) **0%**

>> 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 No change due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **0%**

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	12-Jun-2006
Docket No.	2006-0663-WQ-E
Respondent	Texas Department of Transportation
Case ID No.	29758
Reg. Ent. Reference No.	RN104900493
Media [Statute]	Water Quality
Enf. Coordinator	Sherronda Martin
Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III. Section D.2, and 40 CFR Part 122
Secondary Rule Cite(s)	
Violation Description	Failure to include the permit number on the construction site notice posted on-site, as documented during the investigation conducted March 2, 2006.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes: Approximately 25% of the permit requirement was not met.

Adjustment -$9,900

Base Penalty Subtotal $100

Violation Events

Number of Violation Events: 1

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $100

This violation Final Assessed Penalty (adjusted for limits) $100

Economic Benefit Worksheet

Respondent: Texas Department of Transportation
Case ID No.: 29758
Reg. Ent. Reference No.: RN104900493
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	$50	02-Mar-2006	29-Mar-2006	0.1	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	The approximate cost to include the permit number on the site notice from the date required through the date of compliance (March 29, 2006).						
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: $50

TOTAL: $0

Screening Date 12-Jun-2006 **Docket No.** 2006-0663-WQ-E **PCW**

Respondent Texas Department of Transportation *Policy Revision 2 (September 2002)*

Case ID No. 29758 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN104900493

Media [Statute] Water Quality

Enf. Coordinator Sherronda Martin

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.1(b), Section F.1(i), and Section F.5(b), and 40 CFR Part 122

Secondary Rule Cite(s)

Violation Description Failure to identify waste oil and other fluids as construction and waste materials expected to be stored on-site and describe controls or best management practices to reduce pollutants from these materials, failure to include an adequate description of the intended schedule or sequence of major activities that will disturb soil for major portions of the site, and failure to include a copy of the Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000 in the storm water pollution prevention plan ("SWP3"), as documented during the investigation on March 2, 2006.

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 1%

Matrix Notes: Less than 25% of the permit requirement was not met.

Adjustment -$9,900

Base Penalty Subtotal $100

Violation Events

Number of Violation Events 1

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

Violation Base Penalty $100

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $3

Statutory Limit Test

Violation Final Penalty Total $100

This violation Final Assessed Penalty (adjusted for limits) $100

Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 29758
Reg. Ent. Reference No. RN104900493
Media [Statute] Water Quality
Violation No. 2

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				0.0	$0	n/a	$0
Other (as needed)	$700	02-Mar-2006	29-Mar-2006	0.1	$3	n/a	$3

Notes for DELAYED costs The approximate cost to include in the SWP3, a description of construction and waste materials expected to be stored on-site, the intended schedule for major grading activities, and a copy of the TPDES general permit from the date required through the date of compliance (March 29, 2006).

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 $700

TOTAL $3

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	12-Jun-2006
Docket No.	2006-0663-WQ-E
Respondent	Texas Department of Transportation
Case ID No.	29758
Reg. Ent. Reference No.	RN104900493
Media [Statute]	Water Quality
Enf. Coordinator	Sherronda Martin
Violation Number	3
Primary Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.1(f), Section F.2(b)(ii), and 40 CFR Part 122
Secondary Rule Cite(s)	
Violation Description	Failure to identify, on the detailed site map, drainage patterns and approximate slopes anticipated after major grading activities, surface waters either adjacent or in close proximity, and the name of the receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project and failure to maintain or reference required records of major grading activities and temporarily or permanently ceasing of construction activities, as documented during the investigation conducted March 2, 2006.

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 5%

Matrix Notes: Approximately 66% of the permit requirement was not met.

Adjustment -$9,500

Base Penalty Subtotal $500

Violation Events

Number of Violation Events: 1

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $500

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

Economic Benefit Worksheet

Respondent: Texas Department of Transportation
Case ID No.: 29758
Reg. Ent. Reference No.: RN104900493
Media [Statute]: Water Quality
Violation No.: 3

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				0.0	$0	n/a	$0
Other (as needed)	$600	02-Mar-2006	29-Mar-2006	0.1	$2	n/a	$2

Notes for DELAYED costs: The approximate cost to revise the site map to include all required details and the approximate cost to include or reference records of major grading activities and the temporary or permanent ceasing of construction activities from date required through the date of compliance (March 29, 2006).

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: $600

TOTAL: $2

Screening Date 12-Jun-2006 **Docket No.** 2006-0663-WQ-E **PCW**

Respondent Texas Department of Transportation *Policy Revision 2 (September 2002)*

Case ID No. 29758 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN104900493

Media [Statute] Water Quality

Enf. Coordinator Sherronda Martin

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.8(a), and 40 CFR Part 122

Secondary Rule Cite(s)

Violation Description Failure to conduct inspections at least every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, as documented during the investigation conducted March 2, 2006. Specifically, the investigator documented that inspections were not conducted within 24 hours of the end of a storm event of 0.5 inches or more.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

OR

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Failure to conduct inspections within 24 hours of the end of a 0.5 inch storm event could expose the environment to insignificant amounts of pollutants which would not exceed protective levels.

Adjustment -$9,500

Base Penalty Subtotal $500

Violation Events

Number of Violation Events 1

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $500

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

Economic Benefit Worksheet

Respondent: Texas Department of Transportation
Case ID No.: 29758
Reg. Ent. Reference No.: RN104900493
Media [Statute]: Water Quality
Violation No.: 4

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				0.0	$0	n/a	$0
Other (as needed)	$200	02-Mar-2006	29-Mar-2006	0.1	$1	n/a	$1

Notes for DELAYED costs: The approximate cost to implement investigations within 24 hours of a storm event from the date required through the date of compliance (March 29, 2006).

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: $200

TOTAL: $1

Screening Date	12-Jun-2006	**Docket No.** 2006-0663-WQ-E	**PCW**
Respondent	Texas Department of Transportation		*Policy Revision 2 (September 2002)*
Case ID No.	29758		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN104900493		
Media [Statute]	Water Quality		
Enf. Coordinator	Sherronda Martin		

Violation Number 5

Primary Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.8(d), and 40 CFR Part 122

Secondary Rule Cite(s)

Violation Description Failure to document instances of non-compliances, as documented during the investigation conducted March 2, 2006. Upon review of the site inspection reports, the investigator observed that the unauthorized sediment discharges were not included in the reports and did not identify areas where erosion and sediment controls needed maintenance.

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 1%

Matrix Notes: Approximately 25% of the permit requirement was not met.

Adjustment -$9,900

Base Penalty Subtotal $100

Violation Events

Number of Violation Events 1

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $100

This violation Final Assessed Penalty (adjusted for limits) $100

Economic Benefit Worksheet

Respondent: Texas Department of Transportation
Case ID No.: 29758
Reg. Ent. Reference No.: RN104900493
Media [Statute]: Water Quality
Violation No.: 5

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				0.0	$0	n/a	$0
Other (as needed)	$100	02-Mar-2006	29-Mar-2006	0.1	$0	n/a	$0

Notes for DELAYED costs: The approximate cost to implement the documentation of non-compliances on the site inspection reports from the date required through the date of compliance (March 29, 2006).

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: $100

TOTAL: $0

Screening Date 12-Jun-2006 **Docket No.** 2006-0663-WQ-E **PCW**

Respondent Texas Department of Transportation *Policy Revision 2 (September 2002)*

Case ID No. 29758 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN104900493

Media [Statute] Water Quality

Enf. Coordinator Sherronda Martin

Violation Number 6

Primary Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(a)(i), Section F.2(b)(iii), Tex. Water Code § 26.121(a) and 40 CFR Part 122

Secondary Rule Cite(s)

Violation Description Failure to design erosion and sediment controls in an effective operating condition and failure to initiate stabilization measures resulting in discharges of sediment to waters in the state, as documented during the investigation conducted March 2, 2006. Specifically, the investigator observed that the rock check dams were inadequate in controlling the eroded sediment during rain events and observed that vegetation was not established and alternative stabilization measures were not employed on sloped embankments where construction had temporarily and/or permanently ceased. The investigator also observed significant sediment discharges into the Brazos River and two unnamed tributaries located in the area where construction activities were performed. Sediments also entered the tributary located approximately 150 meters west and downstream of Farm-To-Market Road 199 (Tributary 1 - Georges Creek).

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: By failing to prevent the unauthorized discharge of sediments into water in the state, the environment has been exposed to significant amounts of sediment which seriously impacts surface water quality, is detrimental to aquatic life, and decreases any potential recreational use of the impacted areas.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events 4

mark only one use a small x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $10,000

Four monthly events are recommended from the investigation date (March 2, 2006) through the date of screening (June 12, 2006).

Economic Benefit (EB) for this violation

Estimated EB Amount $601

Statutory Limit Test

Violation Final Penalty Total $10,000

This violation Final Assessed Penalty (adjusted for limits) $10,000

Economic Benefit Worksheet

Respondent: Texas Department of Transportation
Case ID No.: 29758
Reg. Ent. Reference No.: RN104900493
Media [Statute]: Water Quality
Violation No.: 6

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	$1,000	02-Mar-2006	07-Feb-2007	0.9	$47	n/a	$47
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$12,000	02-Mar-2006	02-Feb-2007	0.9	$554	n/a	$554

Notes for DELAYED costs: The approximate cost to design and implement adequate erosion control measures, ensuring all sloped embankments are properly stabilized, the approximate cost remove sediments discharged into the Brazos River and two unnamed tributaries, and the cost to properly dispose of the sediments from the date required through the date of expected compliance (February 7, 2007).

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: $13,000

TOTAL: $601

Screening Date 12-Jun-2006 **Docket No.** 2006-0663-WQ-E **PCW**

Respondent Texas Department of Transportation *Policy Revision 2 (September 2002)*

Case ID No. 29758 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN104900493

Media [Statute] Water Quality

Enf. Coordinator Sherronda Martin

Violation Number 7

Primary Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(a)(v), and 40 CFR Part 122

Secondary Rule Cite(s)

Violation Description Failure to implement controls for waste oil and other fluids expected to be stored on-site and to limit off-site transport of litter, construction debris, and construction materials, as documented during the investigation conducted March 2, 2006. Specifically, the investigator observed open containers containing waste oil, other fluids from equipment maintenance, and a container with a yellow paint type liquid located on a pallet and/or on the ground at the staging area. Also, the investigator observed litter and debris from construction activities spread on the ground in the area located under and to the south of the newly constructed bridge and west of the Brazos River.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Failing to implement best management practices regarding litter and fluids stored on-site will or could expose human health or the environment to insignificant amounts of pollutants which would not exceed protective levels.

Adjustment -$9,500

Base Penalty Subtotal $500

Violation Events

Number of Violation Events 1

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

Violation Base Penalty $500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $500

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

Economic Benefit Worksheet

Respondent: Texas Department of Transportation
Case ID No.: 29758
Reg. Ent. Reference No.: RN104900493
Media [Statute]: Water Quality
Violation No.: 7

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				0.0	$0	n/a	$0
Other (as needed)	$1,000	02-Mar-2006	29-Mar-2006	0.1	$4	n/a	$4

Notes for DELAYED costs: The approximate cost to implement controls for waste oil and other fluids stored on-site, removal of construction litter and debris, and the placement of a metal dumpster at the staging area from the date required through the date of compliance (March 29, 2006).

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: $1,000

TOTAL: $4

Compliance History

Customer/Respondent/Owner-Operator:	CN600803456	Texas Department of Transportation	Classification: AVERAGE	Rating: 2.84
Regulated Entity:	RN104900493	TXDOT FTW CSJ 0259-03-042	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	STORMWATER	PERMIT		TXR15Q620
Location:	ON FROM 0.32 MILE SOUTH OF CR 315 TO 0.47 MILE NORTH OF FM 199 NORTH		Rating Date: 9/1/2005 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	August 28, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 28, 2001 to August 28, 2006			

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

Name: Carolyn V. Lind Phone: (903) 535-5145

Site Compliance History Components

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 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

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.)

N/A

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

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 DEPARTMENT OF	§	**TEXAS COMMISSION ON**
TRANSPORTATION	§	
RN104900493	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-0663-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 Texas Department of Transportation ("TxDOT") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and TxDOT appear before the Commission and together stipulate that:

1. TxDOT owns and operates a highway construction site located 0.32 mile south of County Road 315 to 0.47 mile north of Farm-to-Market Road 199 North in Somervell County, Texas (the "Site").

2. TxDOT has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.

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

4. TxDOT received notice of the violations alleged in Section II ("Allegations") on or about May 28, 2006.

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

6. An administrative penalty in the amount of Eleven Thousand Eight Hundred Dollars ($11,800) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Thousand Three Hundred Sixty Dollars ($2,360) is deferred contingent upon TxDOT'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 TxDOT fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require TxDOT to pay all or part of the deferred penalty. Nine Thousand Four Hundred Forty Dollars ($9,440) shall be conditionally offset by TxDOT's completion of a Supplemental Environmental Project.

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 TxDOT 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 on March 29, 2006 TxDOT has implemented the following corrective measures at the Site:

   a. Submitted a revised copy of the construction site notice to include the Texas Pollutant Discharge Elimination System ("TPDES") General permit number;

   b. Submitted a revised storm water pollution prevention plan ("SWP3") to include identification of waste oil and other fluids expected to be used and a description of controls and best management practices to reduce pollutants from these materials;

   c. Submitted documentation that intended construction schedules and/or sequence of major activities disturbing soil for major portions of a site will be included in the SWP3 for future projects;

   d. Submitted a revised site map to include drainage patterns and approximate slopes anticipated after major grading activities and to include identification of a tributary to which the project directly discharges;

   e. Submitted documentation that a copy of the TPDES General Permit is included in the SWP3;

   f. Submitted a copy of daily work reports referencing major grading activities and temporary or permanent ceasing of construction to include in the SWP3;

   g. Submitted documentation that controls for waste oil and other fluids expected to be stored on-site and limiting the off-site transport of litter, construction debris and construction materials have been implemented;

   h. Submitted documentation demonstrating the implementation of investigations conducted within 24 hours of the end of a storm event of one-half inches; and

   i. Submitted documentation that the inclusion of all instances of non-compliances on the storm water inspection reports has been implemented.

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 TxDOT 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 Site, TxDOT is alleged to have:

1. Failed to include the permit number on the construction site notice posted on-site, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section D.2, and 40 CODE OF FEDERAL REGULATIONS ("CFR") PART 122, as documented during an investigation conducted on March 2, 2006.

2. Failed to identify waste oil and other fluids expected to be stored on-site or to describe controls or best management practices to minimize pollutant discharge from these materials in the SWP3, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.5(b), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006.

3. Failed to include an adequate description of the intended schedule or sequence of major activities that will disturb soils for major portions of the site in the SWP3, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.1(b), 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006.

4. Failed to include a copy of the TPDES General Permit in the SWP3, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.1(i), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006.

5. Failed to identify, on the detailed site map, drainage patterns and approximate slopes anticipated after major grading activities, surface waters either adjacent or in close proximity, and the name of the receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.1(f), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006.

6. Failed to maintain or reference required records of major grading activities and temporarily or permanently ceasing of construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(b)(ii), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006.

7. Failed to conduct inspections at least every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.8(a), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006. Specifically, the investigator documented that inspections were not conducted within 24 hours of the end of a storm event of 0.5 inches or more.

8. Failed to identify instances of non-compliance on inspection reports, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.8(d), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006. Specifically, inspection reports did not identify unauthorized discharges of sediment, did not identify locations where the rock check dams or silt fencing required maintenance, and did not identify sloped embankments with significant erosion.

9. Failed to design erosion and sediment controls to retain sediment on-site to the extent practicable, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(a)(i), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006. Specifically, the rock check dams had reached their capacity and the silt fencing had collapsed due to the accumulation of sediment around the fencing.

10. Failed to ensure that stabilization measures initiated on portions of the site where construction had temporarily and/or permanently ceased was established, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(b)(iii), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006. Specifically, the investigator observed significant erosion of sloped embankments due to inadequate stabilization.

11. Failed to prevent the unauthorized discharge of sediments into water in the state, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on March 2, 2006. Specifically, the investigator observed significant sediment discharges into the Brazos River and two unnamed tributaries located in the area where construction activities were performed. Sediments had also entered the tributary located approximately 150 meters west and downstream of Farm-To-Market Road 199 (Tributary 1 - Georges Creek).

12. Failed to implement controls for waste oil and other fluids expected to be stored on-site and to limit off-site transport of litter, construction debris, and construction materials, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.2(a)(v), and 40 CFR PART 122, as documented during an investigation conducted on March 2, 2006. Specifically, the investigator observed open containers containing waste oil, other fluids from equipment maintenance, and a container with a yellow paint type liquid located on a pallet and/or on the ground at the staging area. Also, the investigator observed litter and debris from construction activities spread on the ground in the area located under and to the south of the newly constructed bridge and west of the Brazos River.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that TxDOT pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and TxDOT'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: Texas Department of Transportation, Docket No. 2006-0663-WQ-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. TxDOT shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Nine Thousand Four Hundred Forty Dollars ($9,440) of the assessed administrative penalty shall be offset with the condition that TxDOT implement the SEP defined in Attachment A, incorporated herein by reference. TxDOT's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that TxDOT shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges of sediment from the Site;

   b. Within 30 days after the effective date of this Agreed Order, ensure:

      i. Erosion and sediment controls are adequately designed to retain sediments on-site to the extent practicable; and

      ii. Stabilization measures are established on portions of the Site where construction has temporarily and/or permanently ceased.

   c. Within 45 days after the effective date of this Agreed Order, remove and properly dispose all sediment that has discharged from the Site; and

d. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 3.a through 3.c. The certification required shall, include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and 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 fine and imprisonment for knowing violations."

The 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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

5. If TxDOT 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, TxDOT's failure to comply is not a violation of this Agreed Order. TxDOT shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. TxDOT shall notify the Executive Director within seven days after TxDOT becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. 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 TxDOT shall be made in writing to the Executive Director. Extensions are not effective until TxDOT receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against TxDOT 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.

8. 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.

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

3/27/07
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

11-3-06
Date

STEVEN E. SIMMONS, P.E.
Name (Printed or typed)
Authorized Representative of
Texas Department of Transportation

DEPUTY EXECUTIVE DIRECTOR
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.

Attachment A
Docket Number: 2006-0663-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Texas Department of Transportation**
Payable Penalty Amount:	**Nine Thousand Four Hundred Forty Dollars ($9,440)**
SEP Amount:	**Nine Thousand Four Hundred Forty Dollars ($9,440)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up**
Location of SEP:	**Somervell County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.