

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NUMBER: 2005-0609-MLM-E TCEQ ID NO: RN104352869 ENF ID: 25109
RESPONDENT NAME: TRANSIT MIX CONCRETE & MATERIALS COMPANY

ORDER TYPE:

<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> DRY CLEANER REGISTRATION	

SITE WHERE VIOLATION(S) OCCURRED: 3902 E. Stan Schlueter Loop, Killeen, Bell County

TYPE OF OPERATION: Concrete ready mix plant

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There was one complaint. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: A complaint has been received but the complainant has not indicated that they wish to protest this action or speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 12, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kathleen C. Decker, Litigation Division, MC 175, (512) 239-6500; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Mr. Kent Heath, Enforcement Division, MC 219, (512) 239-4575

TCEQ Regional Contact: Mr. Don Wyrick, Waco Regional Office, MC R-9, (254) 751-0335

Respondent: Mr. Haywood Walker, President, Transit Mix Concrete & Materials Company, P.O. Box 568887, Dallas Texas 75356

Respondent's Attorney: Mr. Eli Bell, Hilgers Bell & Richards, 816 Congress, Suite 1200, Austin, Texas 78701

<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(s) of Complaints Relating to this Case: October 25, 2004</p> <p>Date(s) of Investigation(s) Relating to this Case: October 25 and 27, 2004</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: February 15, 2005 (NOE)</p> <p>Background Facts:</p> <p>An EDPRP was filed on November 9, 2005. The matter was referred to SOAH and set for an evidentiary hearing. The parties entered into settlement negotiations and a signed Agreed Order was received on January 10, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AIR:</p> <p>1. Failed to prevent the unauthorized disposal of municipal waste. Specifically, unclaimed cement stock piled waste with pH levels between 10 and 12 was disposed of at the Curtis Donaldson property located at 5401 Bunny Trail Road, Killeen, Bell County, Texas, which resulted in a fish kill in the adjacent property's fish pond [30 TEX. ADMIN. CODE § 330.5(a)].</p> <p>2. Failed to prevent the unauthorized discharge of municipal waste into or adjacent to waters in the state. Specifically, from the settling ponds at the Transit Mix Plant located at 3902 East Stan Schlueter Loop, Killeen, Bell County, Texas [TEX. WATER CODE § 26.121(a) and TPDES General Permit No. TXR05P896 Part V, Section E(4); page 56].</p>	<p>Total Assessed: \$27,500</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Due to General Revenue: \$0</p> <p>The Respondent has paid the \$27,500 administrative penalty in full.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <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>This is a Findings Order because the violation involved a discharge of contaminants to the environment and environmental receptors have been exposed to pollutants which exceed levels that are protective. Specifically, fish were killed in the pond that received the unauthorized disposal of cement.</p>	<p>Ordering Provision(s)</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease any unauthorized disposal of municipal solid waste. Specifically, the Respondent shall begin disposing of the unclaimed cement stock pile waste at an authorized facility. 2. Within 15 days, submit written certification notarized by a State of Texas Notary Public and include detailed supporting documentation including, photography, receipts, and or other records to demonstrate compliance with listed Ordering Provision No. 1.
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Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (Form V)

PCW Revision March 02, 2005

DATES	Assigned	07-Mar-2005	Screening	15-Mar-2005	Priority Due	06-Apr-2005	EPA Due	
	PCW	23-Mar-2005						

RESPONDENT/FACILITY INFORMATION	
Respondent	Transit Mix Concrete & Materials Company
Reg. Ent. Ref. No.	RN104352869
Additional ID No(s).	General Stormwater Permit No. TXR05P896
Facility/Site Region	9-Waco
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	25109	No. of Violations	1
Docket No.	2005-0609-MLM-E	Order Type	Findings
Case Priority	1	Enf. Coordinator	Kent Heath
Media Program(s)	Water Quality	EC's Team	Enforcement Team 2
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change due to average performer classification.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: Past event with no opportunity to comply.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$128	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$2,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,500
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral due to Findings Order.

PAYABLE PENALTY	\$2,500
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Screening Date Mar-2005 **Docket No.** 2005-0609 -E **PCW**
Respondent Transit Mix Concrete & Materials Company *Policy Revision 2 (September 2002)*
Case ID No. 25109 *PCW Revision March 02, 2005*
Reg. Ent. Reference No. RN104352869
Additional ID No(s). General Stormwater Permit No. TXR05P896
Media [Statute] Water Quality
Enf. Coordinator Kent Heath
Violation Number 1
Primary Rule Cite(s) Tex. Water Code § 26.121(a) and TPDES General Permit No. TXR05P896, Part V, Section E(4), page 56
Secondary Rule Cite(s)
Violation Description Failure to prevent the unauthorized discharge of municipal waste into or adjacent to waters in the state. Specifically, from the settling ponds at the Transit Mix facility located at 3902 East Stan Schlueter Loop, Killeen, Bell County.
Base Penalty \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		25%
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent

Matrix Notes The unauthorized discharge exposed the environment to a significant amount of pollutants which do not exceed levels that are protective of human health and environmental receptors.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

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 \$2,500

One single event is recommended based on the unauthorized discharge documented on October 25 and 27, 2004.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$128	Violation Final Penalty Total \$2,500
This violation Final Assessed Penalty (adjusted for limits) \$2,500	



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 02, 2005

DATES	Assigned	07-Mar-2005	Screening	15-Mar-2005	Priority Due	06-Apr-2005	EPA Due	
	PCW	23-Mar-2005						

RESPONDENT/FACILITY INFORMATION	
Respondent	Transit Mix Concrete & Materials Company
Reg. Ent. Ref. No.	RN104352869
Additional ID No(s).	None
Facility/Site Region	9-Waco <input type="checkbox"/> Major/Minor Source <input type="checkbox"/> Minor Source

CASE INFORMATION			
Enf./Case ID No.	25109	No. of Violations	1
Docket No.	2005-0609-MLM-E	Order Type	Findings <input type="checkbox"/>
Case Priority	1 <input type="checkbox"/>	Enf. Coordinator	Kent Heath
Media Program(s)	Municipal Solid Waste <input type="checkbox"/>	EC's Team	Enforcement Team 2 <input type="checkbox"/>
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$25,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change due to average performer classification.

Culpability	No <input type="checkbox"/>	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	<i>(mark with a small x)</i>
Notes	The Respondent is not yet in compliance.	

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$442	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$25,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$25,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$25,000
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral due to Findings Order.

PAYABLE PENALTY	\$25,000
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Screening Date	15-Mar-2005	Docket No.	2005-0609-MLM-E	PCW
Respondent	Transit Mix Concrete & Materials Company		<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	25109	<i>PCW Revision March 02, 2005</i>		
Reg. Ent. Reference No.	RN104352869			
Additional ID No(s)	None			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Kent Heath			
Site Address	3902 East Stan Schlueter Loop, Killeen, Bell 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 <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were disclosed)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

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

Screening Date	15-Mar-2005	Docket No.	2005-0609-MLM-E	PGW
Respondent	Transit Mix Concrete & Materials Company			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	25109			<i>PCW Revision March 02, 2005</i>
Reg. Ent. Reference No.	RN104352869			
Additional ID No(s)	None			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Kent Heath			
Violation Number	<input type="text" value="1"/>			
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 330.5(a)"/>			
Secondary Rule Cite(s)	<input type="text"/>			
Violation Description	Failure to prevent the unauthorized disposal of municipal solid waste. Specifically, unclaimed cement stock piled waste with pH levels between 10 and 12 was disposed of at the Curtis Donaldson property located at 5401 Bunny Trail Road, Killeen, Bell County, which resulted in a fish kill in the adjacent property's fish pond, as documented during investigations on October 25 and 27, 2004.			
	Base Penalty	<input type="text" value="\$10,000"/>		

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

		Harm			
	Release	Major	Moderate	Minor	
OR	Actual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="50%"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

		Major	Moderate	Minor	
	Falsification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="checkbox"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>

Violation Base Penalty

Five monthly events are recommended based on the investigation date of October 25, 2004 to the screening date of March 15, 2005, to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$442"/>	Violation Final Penalty Total <input type="text" value="\$25,000"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$25,000"/>	

Economic Benefit Worksheet

Respondent: Transit Mix Concrete & Materials Company
 Case ID No.: 25109
 Reg. Ent. Reference No.: RN104352869
 Additional ID No(s): None
 Media [Statute]: Municipal Solid Waste
 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
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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	\$10,000	27-Oct-2004	15-Sep-2005	0.9	\$442	n/a	\$442
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to dispose of stock pile waste at an authorized facility. Date required is the date of the investigation. Final date is the estimated date of compliance.

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 \$10,000 TOTAL \$442

Compliance History

Customer/Respondent/Owner-Operator:	CN600408009	Transit Mix Concrete & Materials Company	Classification: AVERAGE	Rating: 2.390
Regulated Entity:	RN104352869	TRANSIT MIX CONCRETE AND MATERIALS KILLEEN NO 151	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	STORMWATER	PERMIT		TXR05P896
Location:	3902 E STAN SCHLUETER LOOP, KILLEEN, TX, 76542		Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	March 15, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 14, 2000 to March 14, 2005			

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

Name: Kent Heath Phone: _____

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

Description:

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TRANSIT MIX CONCRETE &
MATERIALS COMPANY,
RN104352869**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2005-0609-MLM-E

At its agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Transit Mix Concrete & Materials Company ("Transit Mix") under the authority of TEX. WATER CODE chs. 7 and 26; and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Transit Mix, represented by Allen Eli Bell of the law firm of Hilgers Bell & Richards, presented this agreement to the Commission.

Transit Mix understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Transit Mix agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Transit Mix.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Transit Mix owns and operates a concrete ready mix plant that produces and distributes ready mix concrete located at 3902 E. Stan Schlueter Loop, Killeen, Bell County, Texas ("the Plant").

2. The Plant involves the management and disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE CH. 361. Transit Mix has discharged municipal waste into or adjacent to any waters in the state under TEX. WATER CODE ch. 26.
3. During inspections conducted on October 25 and 27, 2004, a TCEQ investigator documented that Transit Mix violated:
 - a. 30 TEX. ADMIN. CODE § 330.5(a), by failing to prevent the unauthorized disposal of municipal waste. Specifically, unclaimed cement stock piled waste with pH levels between 10 and 12 was disposed of at the Curtis Donaldson property located at 5401 Bunny Trail Road, Killeen, Bell County, Texas, which resulted in a fish kill in the adjacent property's fish pond.
 - b. TEX. WATER CODE § 26.121(a) and TPDES General Permit No. TXR05P896 Part V, Section E(4), page 56, by failing to prevent the unauthorized discharge of municipal waste into or adjacent to waters in the state. Specifically, from the settling ponds at the Transit Mix Plant located at 3902 East Stan Schlueter Loop, Killeen, Bell County, Texas.
4. Transit Mix received notice of the violations on or about February 15, 2005.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Transit Mix is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002 and ch. 26; TEX. HEALTH & SAFETY CODE CH. 361; and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Transit Mix failed to prevent the unauthorized disposal of municipal waste. Specifically, unclaimed cement stock piled waste with pH levels between 10 and 12 was disposed of at the Curtis Donaldson property located at 5401 Bunny Trail Road, Killeen, Bell County, Texas, which resulted in a fish kill in the adjacent property's fish pond, in violation of 30 TEX. ADMIN. CODE § 330.5(a).
3. As evidenced by Finding of Fact No. 3.b., Transit Mix failed to prevent the unauthorized discharge of municipal waste into or adjacent to waters in the state. Specifically, from the settling ponds at the Transit Mix Plant located at 3902 East Stan Schlueter Loop, Killeen, Bell County, Texas, in violation of TEX. WATER CODE § 26.121(a) and TPDES General Permit No. TXR05P896 Part V, Section E(4), page 56.

4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Transit Mix for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of twenty-seven thousand five hundred dollars (\$27,500.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Transit Mix has paid twenty-seven thousand five hundred dollars (\$27,500.00) of the administrative penalty.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Transit Mix is assessed an administrative penalty in the amount of twenty-seven thousand five hundred dollars (\$27,500.00) as set forth in Conclusion of Law No. 5 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Transit Mix's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Transit Mix Concrete & Materials Company; Docket No. 2005-0609-MLM-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. Transit Mix shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Transit Mix shall cease any unauthorized disposal of municipal solid waste, in accordance with TEX. ADMIN. CODE § 330.5. Specifically, Transit Mix shall begin disposing of the unclaimed cement stock pile waste at an authorized facility.

- b. Within 15 days after the effective date of this Agreed Order, Transit Mix shall submit written certification as described below, and include detailed supporting documentation including receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

The certification shall 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:

Mr. Frank Burleson
Acting Waste Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon Transit Mix. Transit Mix is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Transit Mix 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, Transit Mix's failure to comply is not a violation of this

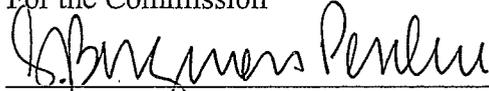
Agreed Order. Transit Mix has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Transit Mix shall notify the Executive Director within seven days after Transit Mix becomes aware of a delaying event and shall take all reasonable measures to mitigate and 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 Transit Mix shall be made in writing to the Executive Director. Extensions are not effective until Transit Mix receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Transit Mix if the Executive Director determines that Transit Mix has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against Transit Mix 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to Transit Mix, or three days after the date on which the Commission mails notice of the Order to Transit Mix, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

3/2/07

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Transit Mix Concrete & Materials Company. I represent that I am authorized to agree to the attached Agreed Order on behalf of Transit Mix Concrete & Materials Company, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Transit Mix Concrete & Materials Company waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that Transit Mix's failure to comply with the Ordering Provisions, if any, in this order and/or its failure to timely pay the penalty amount, may result in:

- A negative impact on Transit Mix's compliance history;
- Greater scrutiny of any permit applications submitted by Transit Mix;
- 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 Transit Mix;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Transit Mix; and
- TCEQ seeking other relief as authorized by law.

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



Signature

01-10-07

Date

Haywood Walker

President

Name (printed or typed)
Authorized Representative
Transit Mix Concrete & Materials Company

Title