EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-2229-AIR-E **TCEQ ID:** RN102165974 **CASE NO.:** 32004

RESPONDENT NAME: Rushing Paving Company, Ltd.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Plant No. 3, 6104 Theresa Drive, Sherman, Grayson County

TYPE OF OPERATION: Asphalt concrete plant

SMALL BUSINESS: X **Yes** ___ **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 April 23, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Jessica Rhodes, Enforcement Division, Enforcement Section III, MC 149, (512) 239-2879; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. Richard J. Rushing, President, Rushing Paving Company, Ltd., P.O. Box 365, Denison, Texas 75021-0365
Mr. Thomas Jones, Construction Manager, Rushing Paving Company, Ltd., P.O. Box 365, Denison, Texas 75021-0365

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(s) of Complaints Relating to this Case:** None **Dates of Investigations Relating to this Case:** July 11 and 31, 2006 **Date of NOE Relating to this Case:** November 30, 2006 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **AIR** Failed to properly maintain emission control equipment during normal operations which resulted in the failure to prevent visible emissions. Specifically, TCEQ staff documented that Rushing Paving did not properly maintain the Drum Mix baghouse (EPN 1) which resulted in visible emissions that averaged 32% and 43% opacity, respectively, over a six minute period. As a result, Rushing Paving failed to meet the 20% required regulatory opacity limit [30 TEX. ADMIN. CODE §§ 116.115(b), 111.111(a)(1)(B), Permit No. 18602, General Condition 9, and TEX. HEALTH AND SAFETY CODE § 382.085(b)].	**Total Assessed:** $2,740 **Total Deferred:** $548 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $2,192 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, design and implement improvements to procedures to ensure that emission control equipment is properly maintained and to prevent the reoccurance of similar visible emissions exceedances; and b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision December 8, 2006*

TCEQ

DATES					
Assigned	4-Dec-2006				
PCW	11-Jan-2007	Screening	15-Dec-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Rushing Paving Company, Ltd.		
Reg. Ent. Ref. No.	RN102165974		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32004	No. of Violations	1
Docket No.	2006-2229-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Jessica Rhodes
Multi-Media		EC's Team	EnforcementTeam 5
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $2,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 37% Enhancement — *Subtotals 2, 3, & 7* $740

Notes: Penalty enhancement due to one 1660-style Agreed Order, three NOVs for same or similar violations, and one NOV for unrelated violations.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $0

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

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$53
Approx. Cost of Compliance	$1,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $2,740

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

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

Notes:

Final Penalty Amount $2,740

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $2,740

DEFERRAL — 20% Reduction — *Adjustment* -$548

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $2,192

Screening Date	15-Dec-2006	Docket No. 2006-2229-AIR-E	PCW
Respondent	Rushing Paving Company, Ltd.		Policy Revision 2 (September 2002)
Case ID No.	32004		PCW Revision December 8, 2006
Reg. Ent. Reference No.	RN102165974		
Media [Statute]	Air Quality		
Enf. Coordinator	Jessica Rhodes		

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*)	3	15%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	1	20%
	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 submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		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) 37%

>> 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

Penalty enhancement due to one 1660-style Agreed Order, three NOVs for same or similar violations, and one NOV for unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 37%

Screening Date	15-Dec-2006	**Docket No.** 2006-2229-AIR-E	PCW
Respondent	Rushing Paving Company, Ltd.		*Policy Revision 2 (September 2002)*
Case ID No.	32004		*PCW Revision December 8, 2006*
Reg. Ent. Reference No.	RN102165974		
Media [Statute]	Air Quality		
Enf. Coordinator	Jessica Rhodes		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 116.115(b), 111.111(a)(1)(B), Permit No. 18602, General Condition 9, and Tex. Health and Safety Code § 382.085(b)

Violation Description Failed to properly maintain emission control equipment during normal operations which resulted in the failure to prevent visible emissions. Specifically, during investigations conducted on July 11, 2006 and July 31, 2006, TCEQ staff documented that Rushing Paving did not properly maintain the Drum Mix baghouse (EPN 1) which resulted in visible emissions that averaged 32% and 43% opacity, respectively, each over a six minute period. As a result, Rushing Paving failed to meet the 20% required regulatory opacity limit.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 2

2 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,000

Two single events are recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $53

Statutory Limit Test

Violation Final Penalty Total $2,740

This violation Final Assessed Penalty (adjusted for limits) $2,740

Economic Benefit Worksheet

Respondent Rushing Paving Company, Ltd.
Case ID No. 32004
Reg. Ent. Reference No. RN102165974
Media Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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	11-Jul-2006	1-Aug-2007	1.1	$53	n/a	$53
Notes for DELAYED costs	Estimated cost for additional oversight and management practices designed to ensure proper maintenance practices are followed. Date Required is based on the date of the violation and Final Date is the expected 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 $1,000

TOTAL $53

Compliance History

Customer/Respondent/Owner-Operator:	CN600466601	Rushing Paving Company, Ltd.	Classification: AVERAGE Rating: 7.61
Regulated Entity:	RN102165974	PLANT NO 3	Classification: AVERAGE Site Rating: 40.17

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	18602
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	GI0144J
	AIR NEW SOURCE PERMITS	REGISTRATION	75214
Location:	6104 THERESA DR, SHERMAN, TX, 75090	Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	December 04, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 04, 2001 to December 04, 2006		

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

Name: Jessica Rhodes Phone: 512-239-2879

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

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

Effective Date: 11/06/2005 ADMINORDER 2005-0247-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)
30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: Special Condition 12 PERMIT
Description: Failed to have operational records available for inspection.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: General Condition 9 PERMIT
Description: Failed to maintain the air pollution abatement equipment in good working order and operating properly during normal plant operations.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: Special Condition No. 2 PERMIT
Description: Failed to maintain emissions below the maximum allowable emission rates, On November 5, 2004, the total suspended particulate (TSP) emissions from the baghouse stack were estimated to be 206 pounds per hour (lbs/hr). The maximum allowable emission rate of TSP from the baghouse stack is 8.58 lb/hr.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: Special Condition No. 6 PERMIT
Description: Failed to obtain written authorization prior to using lime as an asphalt additive.

Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(1)(B)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failed to maintain opacity limits, on November 5, 2004 and December 3, 2004, the visible emissions from the baghouse stack averaged 59% and 69% opacity, respectively, over six consecutive minutes.

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 08/25/2005 (406757)
2 07/06/2005 (396848)
3 12/22/2005 (438109)
4 11/29/2006 (509487)
5 09/19/2005 (431140)
6 06/06/2005 (393859)

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

Date: 03/31/2005 (374283)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: PERMIT IA
Description: Failure to complete a compliance test within 60 days and failure to comply with Title 30 of the Texas Administrative Code, Chapter 116 (30 TAC §116.115 (c)).

Date: 03/31/2005 (350266)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(a)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: PERMIT IA
Description: At the time of the investigation, fugitive dust emissions were noted leaving the plant Eastern property line, when a RPC truck was driving on the South side of the plant.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: PERMIT IA
Description: At the time of the investigation, the plant road was not sprinkled with water and/or environmentally sensitive chemicals. Fugitive dust emissions from the in-plant road were noted leaving the plant property.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THC Chapter 382, SubChapter A 382.085(a)
5C THC Chapter 382, SubChapter A 382.085(b)
Description: It is determined, based on the evidence collected during the investigation that odors from RPC at the frequency, intensity, duration, and offensiveness create a nuisance condition.

Date: 06/06/2005 (393859)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
5C THC Chapter 382, SubChapter A 382.085(a)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: PERMIT IA
Description: Permit MAERT exceedance for VOC

Date: 07/06/2005 (396848)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: PERMIT IA

Description: At the time of the investigation, the opacity of the visible emissions from the baghouse stack averaged 6.7% over a six consecutive minutes, and the pressure drop gauge for the baghouse was reading zero, which indicated that the abatement equipment was not in good working order and was not being operated properly.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
RUSHING PAVING COMPANY, LTD.	§	
RN102165974	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-2229-AIR-E

I. JURISDICTION AND STIPULATIONS

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

1. Rushing Paving owns and operates an asphalt concrete plant at 6104 Theresa Drive in Sherman, Grayson County, Texas (the "Plant").

2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

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

4. Rushing Paving received notice of the violations alleged in Section II ("Allegations") on or about December 5, 2006.

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

6. An administrative penalty in the amount of Two Thousand Seven Hundred Forty Dollars ($2,740) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Rushing Paving has paid Two Thousand One Hundred Ninety-Two Dollars

($2,192) of the administrative penalty and Five Hundred Forty-Eight Dollars ($548) is deferred contingent upon Rushing Paving'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 Rushing Paving fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Rushing Paving to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and Rushing Paving have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Rushing Paving has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, Rushing Paving is alleged to have failed to properly maintain emission control equipment during normal operations which resulted in the failure to prevent visible emissions, in violation of 30 TEX. ADMIN. CODE §§ 116.115(b), 111.111(a)(1)(B), Permit No. 18602, General Condition 9, and TEX. HEALTH AND SAFETY CODE § 382.085(b), as documented during investigations conducted on on July 11, 2006 and July 31, 2006. Specifically, TCEQ staff documented that Rushing Paving did not properly maintain the Drum Mix baghouse (EPN 1) which resulted in visible emissions that averaged 32% and 43% opacity, respectively, over a six minute period. As a result, Rushing Paving failed to meet the 20% required regulatory opacity limit.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Rushing Paving pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Rushing Paving'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: Rushing Paving Company, Ltd., Docket No. 2006-2229-AIR-E" to:

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

2. It is further ordered that Rushing Paving shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, design and implement improvements to procedures to ensure that emission control equipment is properly maintained and to prevent the reoccurance of similar visible emissions exceedances; and

   b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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, Air Section
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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

4. If Rushing Paving 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, Rushing Paving's failure to comply is not a violation of this Agreed Order. Rushing Paving shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Rushing Paving shall notify the Executive Director within seven days after Rushing Paving 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 Rushing Paving shall be made in writing to the Executive Director. Extensions are not effective until Rushing Paving receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Rushing Paving in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

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

_____ 5/15/07
For the Executive Director 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.

Richard J. Rushing 2-16-07
Signature Date

Richard J. Rushing President
Name (Printed or typed) Title
Authorized Representative of
Rushing Paving Company, Ltd.

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.