EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0228-WQ-E **TCEQ ID:** RN103972428 **CASE NO.:** 32619

RESPONDENT NAME: Tex Mix Partners, 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:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Tex-Mix Partners Liberty Hill Plant, 50 County Road 213, Liberty Hill, Williamson County

TYPE OF OPERATION: Concrete batch plant

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received on November 2, 2006, alleging failure to obtain authorization to discharge storm water associated with industrial activity. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on May 7, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. Dan Hanrahan, General Manager, Tex Mix Partners, LTD., P.O. Box 268, Hutto, Texas 78634

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: _X_ Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** November 2, 2006 **Date of Investigation Relating to this Case:** December 1, 2006 **Date of NOE Relating to this Case:** January 30, 2007 (NOE) **Background Facts:** This was a complaint investigation. One violation was documented. **WATER** Failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System [30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CODE OF FED. REGULATIONS § 122.21(a)(1)].	**Total Assessed:** $740 **Total Deferred:** $148 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $592 **Site Compliance History Classification** __ **High** __ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Tex Mix has submitted a Notice of Intent for the Storm Water Permit on December 13, 2006.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision January 9, 2007*

TCEQ

DATES					
Assigned	5-Feb-2007				
PCW	12-Feb-2007	Screening	12-Feb-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Tex Mix Partners, LTD.		
Reg. Ent. Ref. No.	RN103972428		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32619	No. of Violations	1
Docket No.	2007-0228-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	J. Craig Fleming
Multi-Media		EC's Team	EnforcementTeam 4
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — -1% Enhancement — *Subtotals 2, 3, & 7* **-$10**

Notes: The respondent has submitted one Notice of Intent for an audit dated June 23, 2006.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 25% Reduction — *Subtotal 5* **$250**

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

Notes: The respondent came into compliance on December 13, 2006 by submitting a Notice of Intent for the Storm Water Permit.

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$4
Approx. Cost of Compliance	$2,500

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

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

DEFERRAL — 20% Reduction — *Adjustment* **$148**

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 **$592**

Screening Date	12-Feb-2007	**Docket No.** 2007-0228-WQ-E	**PCW**
Respondent	Tex Mix Partners, LTD.		*Policy Revision 2 (September 2002)*
Case ID No.	32619		*PCW Revision January 9, 2007*
Reg. Ent. Reference No.	RN103972428		
Media [Statute]	Water Quality		
Enf. Coordinator	J. Craig Fleming		

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 submitted)*	1	-1%
	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) -1%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The respondent has submitted one Notice of Intent for an audit dated June 23, 2006.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -1%

Screening Date	12-Feb-2007	**Docket No.** 2007-0228-WQ-E	**PCW**
Respondent	Tex Mix Partners, LTD.		*Policy Revision 2 (September 2002)*
Case ID No.	32619		*PCW Revision January 9, 2007*
Reg. Ent. Reference No.	RN103972428		
Media [Statute]	Water Quality		
Enf. Coordinator	J. Craig Fleming		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), and 40 Code of Fed. Regulations § 122.21(a)(1)

Violation Description Failed to obtain authorization to discharge storm water associated with industrial activity. Specifically, the respondent failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System, as documented during the investigation conducted on December 1, 2006.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1

13 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One monthly event is recommended from the date of the investigation conducted on December 1, 2006 to the date of compliance on December 13, 2006.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $740

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

Economic Benefit Worksheet

Respondent Tex Mix Partners, LTD.
Case ID No. 32619
Reg. Ent. Reference No. RN103972428
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs	$2,500	1-Dec-2006	13-Dec-2006	0.0	$4	n/a	$4
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	The estimated cost to prepare and submit a Notice of Intent. The Date Required was the date of the investigation. The Final Date was the 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	NA						

Approx. Cost of Compliance $2,500

TOTAL $4

Compliance History

Customer/Respondent/Owner-Operator:	CN600134720	Tex Mix Partners, LTD.	Classification: AVERAGE	Rating: 2.79
Regulated Entity:	RN103972428	TEX-MIX PARTNERS LIBERTY HILL PLANT	Classification:	Site Rating:
	STORMWATER	PERMIT		TXR05Q162

ID Number(s):

Location: 50 COUNTY ROAD 213, LIBERTY HILL, TX, 78642

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: February 12, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 12, 2002 to February 12, 2007

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

Name: J. Craig Fleming Phone: (512) 239-5806

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? Yes
3. If Yes, who is the current owner? Tex Mix Partners, LTD.
4. if Yes, who was/were the prior owner(s)? Barnard's Septic Tank Manufacturing, Inc.
5. When did the change(s) in ownership occur? 5/1/2006

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.)

F. Environmental audits.

Notice of Intent Date: 06/23/2006 (540244)
No DOV Associated

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**
TEX MIX PARTNERS, LTD.	§	
RN103972428	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0228-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 Tex Mix Partners, LTD. ("Tex Mix") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Tex Mix, appear before the Commission and together stipulate that:

1. Tex Mix owns and operates a concrete batch plant at 50 County Road 213 in Liberty Hill, Williamson County, Texas (the "Plant").

2. Tex Mix has discharged other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.

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

4. Tex Mix received notice of the violations alleged in Section II ("Allegations") on or about February 4, 2007.

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

6. An administrative penalty in the amount of Seven Hundred Forty Dollars ($740) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Tex Mix has

paid Five Hundred Ninety-Two Dollars ($592) of the administrative penalty and One Hundred Forty-Eight Dollars ($148) is deferred contingent upon Tex Mix' 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 Tex Mix fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Tex Mix 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 Tex Mix 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 Tex Mix has submitted a Notice of Intent for the Storm Water Permit on December 13, 2006.

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 Tex Mix has not complied with one or more of the terms or conditions in this Agreed Order.

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

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

II. ALLEGATIONS

As owner and operator of the Plant, Tex Mix is alleged to have failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CODE OF FED. REGULATIONS § 122.21(a)(1), as documented during an investigation conducted on December 1, 2006.

III. DENIALS

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

IV. ORDERING PROVISIONS

paid Five Hundred Ninety-Two Dollars ($592) of the administrative penalty and One Hundred Forty-Eight Dollars ($148) is deferred contingent upon Tex Mix' 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 Tex Mix fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Tex Mix 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 Tex Mix 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 Tex Mix has submitted a Notice of Intent for the Storm Water Permit on December 13, 2006.

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 Tex Mix has not complied with one or more of the terms or conditions in this Agreed Order.

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II. ALLEGATIONS

As owner and operator of the Plant, Tex Mix is alleged to have failed to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CODE OF FED. REGULATIONS § 122.21(a)(1), as documented during an investigation conducted on December 1, 2006.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Tex Mix pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Tex Mix' 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: Tex Mix Partners, LTD., Docket No. 2007-0228-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. The provisions of this Agreed Order shall apply to and be binding upon Tex Mix. Tex Mix is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.

3. This Agreed Order, issued by the Commission, shall not be admissible against Tex 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.

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

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

_____ 6/27/07
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.

Dan Hanrahan 3/7/2007
Signature Date

Dan Hanrahan General Manager
Name (Printed or typed) Title
Authorized Representative of
Tex Mix Partners, 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.