# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO.:** 2007-0707-WQ-E **TCEQ ID:** RN104320882 **CASE NO.:** 33380

**RESPONDENT NAME:** M&T Natural Stone, Inc.

| **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:** M&T Natural Stone, 4317 Farm-to-Market Road 2201, Santo, Palo Pinto County

**TYPE OF OPERATION:** Dimensional stone quarry

**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 October 8, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None

**TCEQ Enforcement Coordinator:** Mr. Chris Keffer, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-5610; Mr. Bryan sinclair, Enforcement Division, MC 219, (512) 239-2171

**Respondent:** Mr. Melvin Jerry Threadgill, President, M&T Natural Stone, Inc., 5605 Thousand Oaks Drive, Joshua, Texas 76058

**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:**<br>__ Complaint<br>_X_ Routine<br>__ Enforcement Follow-up<br>__ Records Review<br><br>**Date(s) of Complaints Relating to this Case:** None<br><br>**Date of Investigation Relating to this Case:** March 27, 2007<br><br>**Date of NOV/NOE Relating to this Case:** April 23, 2007 (NOE)<br><br>**Background Facts:** Violation occurred in the John Graves Scenic Riverway.<br><br>**WATER**<br><br>Failed to obtain authorization to discharge storm water associated with industrial activity to water in the state. Specifically, the Respondent continued to operate although it had failed to submit a Texas Pollutant Discharge Elimination system ("TPDES") permit application for the Site by the January 30, 2007 deadline at which time M&T's general permit authorization expired [30 TEX. ADMIN. CODE § 311.82(b) and TEX. WATER CODE § 26.121(a)(2)]. | **Total Assessed:** $29,760<br><br>**Total Deferred:** $5,952<br>_X_ Expedited Settlement<br><br>__ Financial Inability to Pay<br><br>**SEP Conditional Offset:** $0<br><br>**Total Paid (Due) to General Revenue:** $673 (remaining $23,135 due in 35 monthly payments of $661 each)<br><br>**Site Compliance History Classification**<br>__ **High** _X_ **Average** __ **Poor**<br><br>**Person Compliance History Classification**<br>__ **High** _X_ **Average** __ **Poor**<br><br>**Major Source:** __ Yes _X_ No<br><br>**Applicable Penalty Policy:** September 2002 | **Corrective Actions Taken:**<br><br>1) The Executive Director recognizes that the Respondent submitted an individual TPDES permit application on February 23, 2007, and the application was determined to be administratively complete on April 10, 2007.<br><br>**Ordering Provisions:**<br><br>2) The Order will require the Respondent to:<br><br>a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;<br><br>b. Beginning upon the effective date of this Agreed Order and until such time that authorization to operate is obtained, or until 90 days after the effective date of this Agreed Order, whichever is earlier, comply with expired Permit No. TXR05R383; and<br><br>c. Within 95 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained or that all industrial activities subject to storm water authorization have ceased until such time that appropriate authorization is obtained. |

Additional ID No(s).: Wastewater Permit No. WQ0004821000

# Penalty Calculation Worksheet (PCW)

TCEQ

*Policy Revision 2 (September 2002)* — *PCW Revision April 26, 2007*

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 25-Apr-2007 | | | | |
| PCW | 4-May-2007 | Screening | 26-Apr-2007 | EPA Due | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | M&T Natural Stone, Inc. | | |
| Reg. Ent. Ref. No. | RN104320882 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 33380 | No. of Violations | 1 |
| Docket No. | 2007-0707-WQ-E | Order Type | 1660 |
| Media Program(s) | Water Quality | Enf. Coordinator | Sandy VanCleave |
| Multi-Media | | EC's Team | Order Compliance Team |
| Admin. Penalty $ Limit Minimum | $100 | Maximum | $10,000 |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** — *Subtotal 1* $24,000

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** — 24% Enhancement — *Subtotals 2, 3, & 7* $5,760

Notes: The Respondent received one agreed final enforcement order containing a denial of liability and two NOVs for violations that are not the same or similar as those violations addressed in this enforcement action.

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

Notes: The Respondent does not meet the culpability criteria.

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

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---|---|---|
| Extraordinary | | |
| Ordinary | | |
| N/A | x | (mark with 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 | $44 |
| Approx. Cost of Compliance | $1,500 |

**SUM OF SUBTOTALS 1-7** — *Final Subtotal* $29,760

**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* $29,760

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty* $29,760

**DEFERRAL** — 20% Reduction — *Adjustment* -$5,952

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** $23,808

**Screening Date** 26-Apr-2007 **Docket No.** 2007-0707-WQ-E **PCW**

**Respondent** M&T Natural Stone, Inc.

*Policy Revision 2 (September 2002)*

**Case ID No.** 33380

*PCW Revision April 26, 2007*

**Reg. Ent. Reference No.** RN104320882

**Media [Statute]** Water Quality

**Enf. Coordinator** Sandy VanCleave

# 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 | 2 | 4% |
| 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)*** 24%

>> **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 received one agreed final enforcement order containing a denial of liability and two NOVs for violations that are not the same or similar as those violations addressed in this enforcement action.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** 24%

**Screening Date** 26-Apr-2007 **Docket No.** 2007-0707-WQ-E **PCW**

**Respondent** M&T Natural Stone, Inc. *Policy Revision 2 (September 2002)*

**Case ID No.** 33380 *PCW Revision April 26, 2007*

**Reg. Ent. Reference No.** RN104320882

**Media [Statute]** Water Quality

**Enf. Coordinator** Sandy VanCleave

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 311.82(b) and Tex. Water Code § 26.121(a)(2)

**Violation Description** Failed to obtain authorization to discharge storm water associated with industrial activity to water in the state. Specifically, an investigation conducted on March 27, 2007 documented that M&T continued to operate although it had failed to submit a TPDES permit application for the Site by the January 30, 2007 deadline at which time M&T's general permit authorization expired.

**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: The Respondent failed to comply with 100 percent of this rule.

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 24 | 24 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | x |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $24,000

24 daily events are recommended based on the application deadline date of January 30, 2007 to the date the permit application was submitted on February 23, 2007.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $44

## Statutory Limit Test

**Violation Final Penalty Total** $29,760

**This violation Final Assessed Penalty (adjusted for limits)** $29,760

# Economic Benefit Worksheet

**Respondent** M&T Natural Stone, Inc.
**Case ID No.** 33380
**Reg. Ent. Reference No.** RN104320882
**Media** Water 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 | $1,500 | 30-Jan-2007 | 1-Sep-2007 | 0.6 | $44 | n/a | $44 |
| Other (as needed) | | | | 0.0 | $0 | n/a | $0 |

Notes for DELAYED costs: Estimated cost to develop and submit a permit application. Date required was application deadline date. Final date is the estimated date the permit will be issued.

| 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: $1,500

TOTAL: $44

# Compliance History

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN602656621 | M&T Natural Stone, Inc. | Classification: AVERAGE | Rating: 39.00 |
| Regulated Entity: | RN104320882 | M&T NATURAL STONE | Classification: AVERAGE | Site Rating: 39.00 |
| ID Number(s): | WASTEWATER | PERMIT | WQ0004821000 | |
| | WASTEWATER | EPA ID | TX0129461 | |
| | STORMWATER | PERMIT | TXR05R383 | |
| Location: | 4317 FM 2201, SANTO, TX, 76472 | | Rating Date: September 01 06 | Repeat Violator: NO |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | | |
| Date Compliance History Prepared: | May 03, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | May 03, 2002 to May 03, 2007 | | | |

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

Name: Sandy VanCleave Phone: (512) 239-2670

## 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: 04/29/2006 ADMINORDER 2005-1814-WQ-E

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26[G]

Rqmt Prov: MSGP TXR050000 Part III.A.5(c) PERMIT

Description: Failed to fully develop the Storm Water Prevention Plan ("SWP3") erosion control measures and use prevention measures and controls to reduce soil erosion in areas of the facility that have ongoing erosion or potential for soil erosion.

Classification: Major

Citation: TWC Chapter 26 26.121(a)(1)

Description: Failure to prevent a non-compliance discharge of sediment to waters in the state.

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 07/14/2004 (275918)
2 12/31/2004 (341162)
3 11/08/2005 (436190)
4 10/05/2006 (509685)
5 04/23/2007 (555785)

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

Date: 07/15/2004 (275918)

Self Report? NO Classification: Moderate

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

Description: Failure to develop and maintain a Storm Water Pollution Prevention Plan (SWPPP).

Self Report? NO Classification: Moderate

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

Description: Failure to develop adequate BMPs to address the potential pollutants at the facility.

Date: 12/31/2004 (341162)

Self Report? NO Classification: Moderate

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

Description: Failure to develop and maintain a Storm Water Pollution Prevention Plan (SWPPP).

Self Report? NO Classification: Moderate

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

Description: Failure to develop adequate BMPs to address the potential pollutants at the facility.

Self Report? NO Classification: Moderate

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

Rqmt Prov: PERMIT MSGP TXR050000 Part V.J.4.

Description: Failure to conduct benchmark monitoring during the third quarter of 2004.

Self Report? NO Classification: Moderate

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

Rqmt Prov: PERMIT TXR050000 Part III.A.3(c)

Description: Failure to include a non-storm water certification.

Self Report? NO Classification: Minor

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

Rqmt Prov: PERMIT MSGP TXR050000 Part III.A.4(a)

Description: Failure to include stockpiled soil from mining activity in the inventory of exposed material.

Self Report? NO Classification: Moderate

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

Rqmt Prov: PERMIT MSGP TXR050000 Part III.A.5(b)(5)

Description: Failure to develop and/or describe spill prevention and clean-up techniques in the SWPPP.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26[G]

Rqmt Prov: PERMIT MSGP TXR050000 Part III.A.5(c)

Description: Failed to fully develop the Storm Water Prevention Plan ("SWP3") erosion control measures and use prevention measures and controls to reduce soil erosion in areas of the facility that have ongoing erosion or potential for soil erosion.

Self Report? NO Classification: Moderate

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

Rqmt Prov: PERMIT MSGP TXR050000 Part III.A.5(d)

Description: Failure to develop a maintenance program for structural controls.

Self Report? NO Classification: Moderate

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

Rqmt Prov: PERMIT MSGP TXR050000 Part III.A.5(h)

Description: Failure to conduct quarterly visual monitoring.

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** |
| **M&T NATURAL STONE, INC.** | § | |
| **RN104320882** | § | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2007-0707-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 M&T Natural Stone, Inc. ("M&T") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and M&T appear before the Commission and together stipulate that:

1. M&T owns and operates a dimensional stone quarry at 4317 Farm-to-Market Road 2201 in Santo, Palo Pinto County, Texas (the "Site").

2. M&T 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 M&T agree that the Commission has jurisdiction to enter this Agreed Order, and that M&T is subject to the Commission's jurisdiction.

4. M&T received notice of the violations alleged in Section II ("Allegations") on or about April 28, 2007.

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

6. An administrative in the amount of Twenty-Nine Thousand Seven Hundred Sixty Dollars ($29,760) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). M&T has paid Six Hundred Seventy-Three Dollars ($673) of the administrative

penalty and Five Thousand Nine Hundred Fifty-Two Dollars ($5,952) is deferred contingent upon M&T's timely and satisfactory compliance with all the terms of this Agreed Order. If M&T fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require M&T to pay all or part of the deferred penalty.

The remaining amount of Twenty Three Thousand One Hundred Thirty-Five Dollars ($23,135) of the administrative penalty shall be payable in 35 monthly payments of Six Hundred Sixty-One Dollars ($661) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If M&T fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of M&T to meet the payment schedule of this Agreed Order constitutes the failure by M&T to timely and satisfactorily comply with all the terms of this Agreed Order.

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 M&T 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 M&T submitted an individual Texas Pollutant Discharge Elimination System ("TPDES") permit application on February 23, 2007, and the application was determined to be administratively complete on April 10, 2007.

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 M&T 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, M&T is alleged to have failed to obtain authorization to discharge storm water associated with industrial activity to water in the state, in violation of 30 TEX. ADMIN. CODE § 311.82(b) and TEX. WATER CODE § 26.121(a)(2). Specifically, an investigation conducted on March 27, 2007 documented that M&T continued to operate although it had failed to submit a TPDES permit application for the Site by the January 30, 2007 deadline at which time M&T's general permit authorization expired.

## III. DENIALS

M&T generally denies each allegation in Section II ("Allegations").

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that M&T pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and M&T'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: M&T Natural Stone, Inc., Docket No. 2007-0707-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. It is further ordered that M&T shall undertake the following technical requirements:

   a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;

   b. Beginning upon the effective date of this Agreed Order and until such time that authorization to operate is obtained, or until 90 days after the effective date of this Agreed Order, whichever is earlier, comply with expired Permit No. TXR05R383; and

   c. Within 95 days after the effective date of this Agreed Order, submit written certification as described below that either authorization to operate has been obtained or that all industrial activities subject to stormwater authorization have ceased until such time that appropriate authorization is obtained. 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:

Water Quality Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon M&T. M&T 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.

4. If M&T 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, M&T's failure to comply is not a violation of this Agreed Order. M&T shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. M&T shall notify the Executive Director within seven days after M&T 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 M&T shall be made in writing to the Executive Director. Extensions are not effective until M&T 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 M&T 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 M&T, or three days after the date on which the Commission mails notice of the Order to M&T, 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

_____ 10/18/07
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 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

_____ 07/29/07
Signature Date

Melvin J. Threadgill President
Name (Printed or typed) Title
Authorized Representative of
M&T Natural Stone, Inc.

**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.