

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2007-0947-AIR-E **TCEQ ID:** RN102885662 **CASE NO.:** 33807  
**RESPONDENT NAME:** Rushing Paving Company, Ltd.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Rushing Paving, 6630 West Farm-to-Market Road 120, Denison, Grayson County</p> <p><b>TYPE OF OPERATION:</b> Construction</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received April 26, 2007 concerning a large fire. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 22, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Bryan Elliott, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6162; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Richard J. Rushing, President, Rushing Paving Company, Ltd., P.O. Box 365, Denison, Texas 75021-0365  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> April 26, 2007</p> <p><b>Date of Investigation Relating to this Case:</b> April 27, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 30, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation. One violation was documented.</p> <p><b>AIR</b></p> <p>Failed to prevent unauthorized outdoor burning. Specifically, Rushing Paving burned unauthorized material on April 27, 2007 [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$2,675</p> <p><b>Total Deferred:</b> \$535  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,140</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease all unauthorized burning;</p> <p>b. Within 30 days after the effective date of this Agreed Order, remove all remains of the burn piles, sheet metal, wiring, and other debris from the Site and dispose of the waste at an authorized facility; and</p> <p>c. 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 Provisions a. and b.</p>

Additional ID No(s): Air NSR Registration No. 80986



## Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

<b>DATES</b>	Assigned	4-Jun-2007	<b>Screening</b>	14-Jun-2007	<b>EPA Due</b>	
	PCW	15-Jun-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Rushing Paving Company, Ltd.		
Reg. Ent. Ref. No.	RN102885662		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	33807	No. of Violations	1
Docket No.	2007-0947-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Bryan Elliott
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

### Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>		<b>Subtotal 1</b>	\$2,500
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
<b>Compliance History</b>		7% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>
			\$175
Notes	The penalty was enhanced due to one NOV for similar violations and one NOV for dissimilar violations.		
<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>
			\$0
Notes	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply</b>		0% Reduction	<b>Subtotal 5</b>
			\$0
	Before NOV	NOV to EDP RP/Settlement Offer	
Extraordinary			
Ordinary			
N/A	X	(mark with x)	
Notes	The Respondent does not meet the good faith criteria.		
		0% Enhancement*	<b>Subtotal 6</b>
			\$0
Total EB Amounts	\$18	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$500		
<b>SUM OF SUBTOTALS 1-7</b>		<b>Final Subtotal</b>	\$2,675
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$0
Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)			
Notes			
		<b>Final Penalty Amount</b>	\$2,675
<b>STATUTORY LIMIT ADJUSTMENT</b>		<b>Final Assessed Penalty</b>	\$2,675
<b>DEFERRAL</b>		20% Reduction	<b>Adjustment</b>
			-\$535
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)			
Notes	Deferral offered for expedited settlement.		
<b>PAYABLE PENALTY</b>			\$2,140

**Screening Date** 14-Jun-2007

**Docket No.** 2007-0947-AIR-E

**PCW**

**Respondent** Rushing Paving Company, Ltd.

*Policy Revision 2 (September 2002)*

**Case ID No.** 33807

*PCW Revision May 25, 2007*

**Reg. Ent. Reference No.** RN102885662

**Media [Statute]** Air

**Enf. Coordinator** Bryan Elliott

**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>	1	5%
	Other written NOVs	1	2%
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 submitted)</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)** 7%

>> **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 penalty was enhanced due to one NOV for similar violations and one NOV for dissimilar violations.

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

<b>Screening Date</b> 14-Jun-2007	<b>Docket No.</b> 2007-0947-AIR-E	<b>PCW</b>		
<b>Respondent</b> Rushing Paving Company, Ltd.	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 33807	<i>PCW Revision May 25, 2007</i>			
<b>Reg. Ent. Reference No.</b> RN102885662				
<b>Media [Statute]</b> Air				
<b>Enf. Coordinator</b> Bryan Elliott				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 111.201 and Tex. Health and Safety Code § 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to prevent unauthorized outdoor burning. Specifically, Rushing Paving burned unauthorized material on April 27, 2007."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	X	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="25%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment was exposed to significant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation."/>			
<b>Adjustment</b>		<input type="text" value="\$7,500"/>		
		<input type="text" value="\$2,500"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<b>Number of violation days</b>	
		<input type="text" value="1"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	X		
<input type="text" value="One single event is recommended."/>			<input type="text" value="\$2,500"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$18"/>	<b>Violation Final Penalty Total</b>	
			<input type="text" value="\$2,675"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			<input type="text" value="\$2,675"/>	

## Economic Benefit Worksheet

**Respondent** Rushing Paving Company, Ltd.  
**Case ID No.** 33807  
**Reg. Ent. Reference No.** RN102885662  
**Media** Air  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$500	27-Apr-2007	15-Jan-2008	0.7	\$18	n/a	\$18
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs** Estimated cost for proper disposal of unauthorized burning material. Date Required is based on the date of the unauthorized burn and Final Date is the prospective 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**

<b>Approx. Cost of Compliance</b>	\$500	<b>TOTAL</b>	\$18
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# Compliance History

Customer/Respondent/Owner-Operator:	CN600466601	Rushing Paving Company, Ltd.	Classification: AVERAGE	Rating: 7.61
Regulated Entity:	RN102885662	RUSHING PAVING	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	AIR NEW SOURCE PERMITS	REGISTRATION		80986
	PETROLEUM STORAGE TANK	REGISTRATION		75270
	REGISTRATION			
	PETROLEUM STORAGE TANK	REGISTRATION		75270
REGISTRATION				
Location:	6630 W FM 120, DENISON, TX, 75020		Rating Date: September 01 06 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 14, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 14, 2002 to June 14, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Bryan Elliott</u>	Phone:	<u>239-6162</u>	

## 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.  
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.)
- |   |            |          |  |
|---|------------|----------|--|
| 1 | 05/09/2005 | (377384) |  |
| 2 | 06/05/2007 | (562632) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |          |                          |
|--------------|--|----------|--------------------------|
| Date:        | 03/31/2005   | (350807) |                          |
| Self Report? | NO   |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 111, SubChapter B 111.201<br>5C THC Chapter 382, SubChapter A 382.085(a)<br>5C THC Chapter 382, SubChapter A 382.085(b)   |          |                          |
| Description: | Failure to comply with the general prohibition on outdoor burning within the State of Texas as required by 30 TAC 111.201 by not meeting an exception as provided in 30 TAC 111.205-111.215. Rushing Paving conducted burning of unauthorized materials. |          |                          |
| Date:        | 04/23/2007   | (557595) |                          |
| Self Report? | NO   |          | Classification: Moderate |
| Citation:    | TWC Chapter 26 26.121[G]   |          |                          |
| Description: | Failure to prevent discharges of oil to surface soils/asphalt at the site.   |          |                          |
- 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  
ENFORCEMENT ACTION  
CONCERNING  
RUSHING PAVING COMPANY, LTD.  
RN102885662**

§  
§  
§  
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§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-0947-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 a construction site located at 6630 West Farm-to-Market Road 120 in Denison, Grayson County, Texas (the "Site").
2. The Site 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 June 4, 2007.
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 Six Hundred Seventy-Five Dollars (\$2,675) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Rushing Paving has paid Two Thousand One Hundred Forty Dollars (\$2,140) of



the administrative penalty and Five Hundred Thirty-Five Dollars (\$535) 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 Site, Rushing Paving is alleged to have failed to prevent unauthorized outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 27, 2007. Specifically, Rushing Paving burned unauthorized material on April 27, 2007.

## **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. 2007-0947-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. Immediately upon the effective date of this Agreed Order, cease all unauthorized burning;
  - b. Within 30 days the effective date of this Agreed Order, remove all remains of the burn piles, sheet metal, wiring, and other debris from the Site and dispose of the waste at an authorized facility; and
  - c. 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 Nos. 2.a. and 2.b. 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:

Air 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 Rushing Paving. Rushing Paving 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 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

  
\_\_\_\_\_  
For the Executive Director

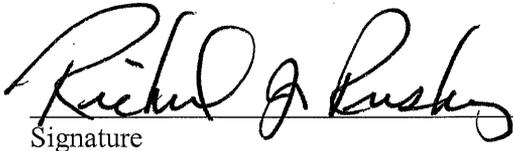
\_\_\_\_\_  
Date 11/13/2007

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.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 8-20-2007

**Richard J. Rushing**  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Rushing Paving Company, Ltd.

\_\_\_\_\_  
Title **President**

**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.

*Handwritten signature*