

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2008-0288-MLM-E **TCEQ ID:** RN104543780 **CASE NO.:** 35387
RESPONDENT NAME: AUSTIN EQUIPMENT COMPANY, LC

ORDER TYPE:		
<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	
CASE TYPE:		
<input type="checkbox"/> AIR	<input checked="" 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Austin Equipment Site, 501 County Road 344, Jarrell, Williamson County</p> <p>TYPE OF OPERATION: Rock quarry</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received October 25, 2007, concerning the milky condition of Salado Creek. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 11, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Steven Lopez, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1896; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. John W. Schuler, Partner/Manager, AUSTIN EQUIPMENT COMPANY, LC, 1405 East Riverside Drive, Austin, Texas 78741-1137 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

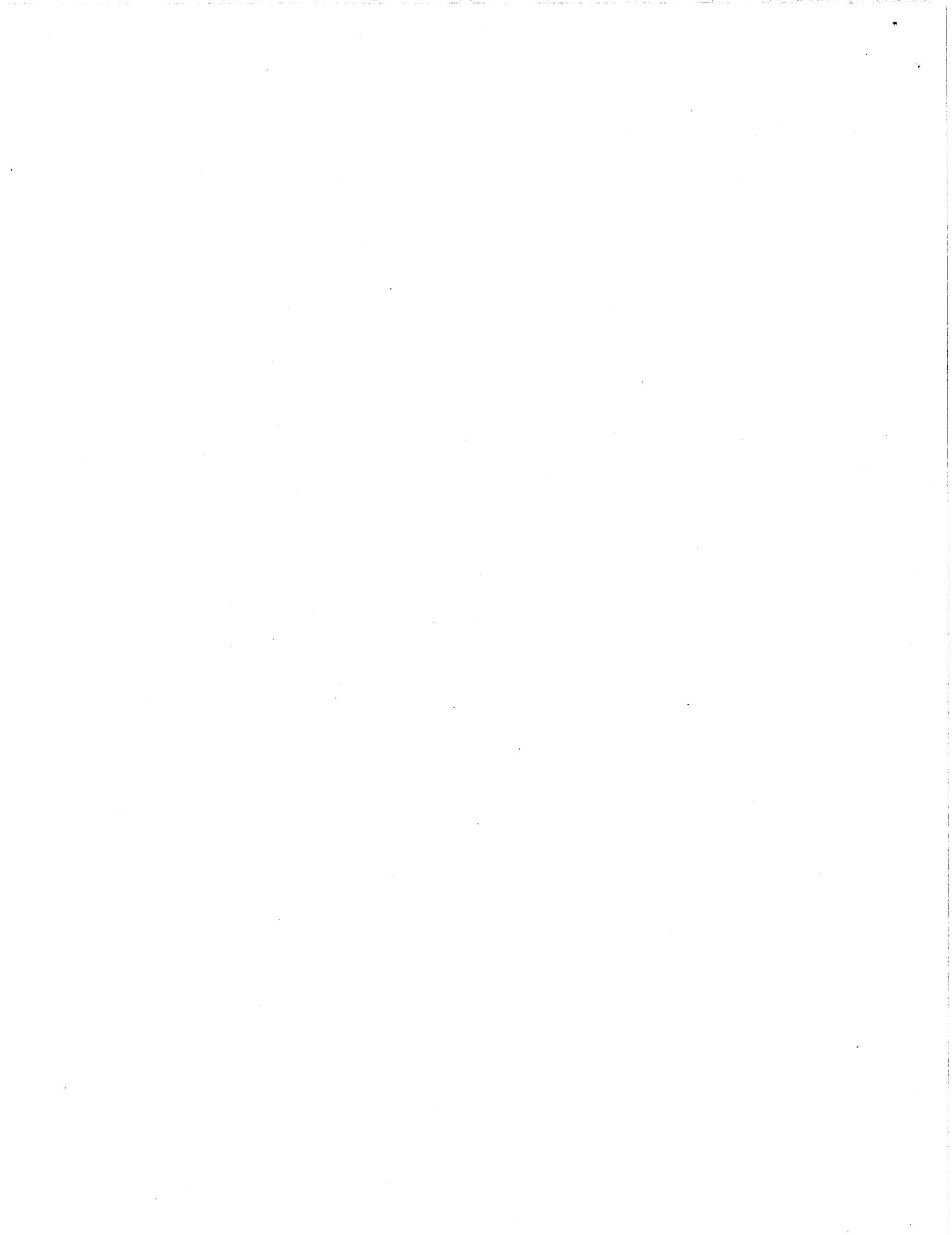
TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY
 2008 SEP 22 AM 11:44
 CHIEF CLERKS OFFICE

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: October 25, 2007</p> <p>Date of Investigation Relating to this Case: October 25, 2007</p> <p>Date of NOV/NOE Relating to this Case: January 25, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>1) Failure to immediately abate and contain spills or releases of oil. Specifically, diesel fuel was observed on the ground near the northeast corner of the quarry pit [30 TEX. ADMIN. CODE § 327.5(a)].</p> <p>WATER</p> <p>2) Failure to comply with the approved Water Pollution Abatement Plan ("WPAP") by allowing vehicle maintenance to be performed outside the shop area. Specifically, vehicle maintenance was being performed in the quarry pit [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201, Factors Affecting Water Quality].</p> <p>3) Failure to prevent regulated activities within a protective 50 foot stream buffer. Specifically, excavated material was placed within the protective 50 foot stream buffer of an unnamed tributary to Salado Creek [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201, Permanent Pollution Abatement Measures].</p> <p>4) Failure to install and maintain temporary sediment controls. Specifically, in the area between the berm north of the aggregate washing ponds and the unnamed</p>	<p>Total Assessed: \$18,415</p> <p>Total Deferred: \$3,683 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$1,532 (remaining \$13,200 due in 11 monthly payments of \$1,200 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. On December 5, 2007, the TCEQ Austin Regional Office received documentation verifying that the Respondent moved excavated materials outside of the 50 foot stream buffer;</p> <p>b. On December 5, 2007, the TCEQ Austin Regional Office received documentation verifying that the Respondent installed proper sediment controls; and</p> <p>c. On December 12, 2007, the Respondent received approval for the modification to the Edwards Aquifer WPAP for the aggregate washing ponds.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, provide training to employees on authorized location to conduct all vehicle maintenance;</p> <p>b. Within 30 days after the effective date of this Agreed Order, submit a report which includes a summary of remediation activities that took place, confirming that all contaminated soils at the Site have been properly remediated. Remediation activities will address all areas where stained soils and soils contaminated with diesel, lubricant, and grease spills/stains were observed in the northeast and southeast corners of quarry pit. The report shall include analytical results of soil confirmation sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed in an authorized manner; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed</p>

<p>tributary of Salado Creek, sediment controls were missing or inadequate and the south crossing of Salado Creek had no sediment controls [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201, Standard Condition No. 6].</p> <p>5) Failure to obtain approval of a WPAP modification prior to initiating construction of the modification. Specifically, aggregate washing ponds were constructed without approval [30 TEX. ADMIN. CODE § 213.4(a)(1) and Edwards Aquifer WPAP No. 05022201, Standard Condition No. 4].</p>		<p>supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>
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Additional ID No(s): 11-05022201





Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

DATES	Assigned	4-Feb-2008	Screening	11-Feb-2008	EPA Due	
	PCW	18-Mar-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	AUSTIN EQUIPMENT COMPANY, LC		
Reg. Ent. Ref. No.	RN104543780		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	35387	No. of Violations	5
Docket No.	2008-0288-MLM-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Steven Lopez
Multi-Media	Municipal Solid Waste	EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 27% Enhancement Subtotals 2, 3, & 7

Notes: Enhancement for one previous 1660 Agreed Order, one NOV with same or similar violations and one NOV without same or similar violations.

Culpability No 0% Enhancement Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5

	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.

Total EB Amounts 0% Enhancement* Subtotal 6
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 11-Feb-2008

Docket No. 2008-0288-MLM-E

PCW

Respondent AUSTIN EQUIPMENT COMPANY, LC

Policy Revision 2 (September 2002)

Case ID No. 35387

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN104543780

Media [Statute] Edwards Aquifer

Enf. Coordinator Steven Lopez

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)	1	5%
	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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one previous 1660 Agreed Order, one NOV with same or similar violations and one NOV without same or similar violations.

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

Screening Date 11-Feb-2008 **Docket No.** 2008-0288-MLM-E **PCW**
Respondent AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*
Case ID No. 35387 *PCW Revision January 29, 2008*
Reg. Ent. Reference No. RN104543780
Media [Statute] Edwards Aquifer
Enf. Coordinator Steven Lopez
Violation Number
Rule Cite(s)
Violation Description Failed to immediately abate and contain spills or releases of oil. Specifically, diesel fuel was observed on the ground near the northeast corner of the quarry pit.
Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text" value="25%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

Two quarterly events are recommended from the investigation date of October 25, 2007 to the screening date of February 11, 2008.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent AUSTIN EQUIPMENT COMPANY, LC
Case ID No. 35387
Reg. Ent. Reference No. RN104543780
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$3,000	25-Oct-2007	25-Nov-2008	1.1	\$163	n/a	\$163
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	25-Oct-2007	25-Nov-2008	1.1	\$82	n/a	\$82

Notes for DELAYED costs

Estimated cost for sampling of contaminated area and disposal of contaminated soil. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,500

TOTAL

\$245

Screening Date 11-Feb-2008 **Docket No.** 2008-0288-MLM-E **PCW**
Respondent AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*
Case ID No. 35387 *PCW Revision January 29, 2008*
Reg. Ent. Reference No. RN104543780
Media [Statute] Edwards Aquifer
Enf. Coordinator Steven Lopez

Violation Number
Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Water Pollution Abatement Plan No. 05022201, Factors Affecting Water Quality

Violation Description Failed to comply with the approved Water Pollution Abatement Plan by allowing vehicle maintenance to be performed outside the shop area. Specifically, vehicle maintenance was being performed in the quarry pit.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent AUSTIN EQUIPMENT COMPANY, LC
Case ID No. 35387
Reg. Ent. Reference No. RN104543780
Media Edwards Aquifer
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$100	25-Oct-2007	25-Nov-2008	1.1	\$5	n/a	\$5
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to train employees to ensure vehicle maintenance is conducted in authorized areas only. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item. (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$5

Screening Date 11-Feb-2008 **Docket No.** 2008-0288-MLM-E **PCW**
Respondent AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*
Case ID No. 35387 *PCW Revision January 29, 2008*
Reg. Ent. Reference No. RN104543780
Media [Statute] Edwards Aquifer
Enf. Coordinator Steven Lopez
Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Water Pollution Abatement Plan No. 05022201, Permanent Pollution Abatement Measures

Violation Description Failed to prevent regulated activities within a protective 50 foot stream buffer. Specifically, excavated material was placed within the protective 50 foot stream buffer of an unnamed tributary to Salado Creek.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent AUSTIN EQUIPMENT COMPANY, LC
Case ID No. 35387
Reg. Ent. Reference No. RN104543780
Media Edwards Aquifer
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$300	25-Oct-2007	5-Dec-2007	0.1	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to move the berm (excavated materials) outside the 50 foot stream buffer. The Date Required is the investigation date and the Final Date is 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

Approx. Cost of Compliance	\$300	TOTAL	\$2
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Screening Date 11-Feb-2008 **Docket No.** 2008-0288-MLM-E **PCW**
Respondent AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*
Case ID No. 35387 *PCW Revision January 29, 2008*
Reg. Ent. Reference No. RN104543780
Media [Statute] Edwards Aquifer
Enf. Coordinator Steven Lopez
Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Water Pollution Abatement Plan No. 05022201, Standard Condition No. 6

Violation Description

Failed to install and maintain temporary sediment controls. Specifically, in the area between the berm north of the aggregate washing ponds and the unnamed tributary of Salado Creek, sediment controls were missing or inadequate and the south crossing of Salado Creek had no sediment controls.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					25%
Potential			x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 42 Number of violation days

<i>mark only one with an x</i>	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the investigation date of October 25, 2007 to the compliance date of December 5, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$3,175

This violation Final Assessed Penalty (adjusted for limits) \$3,175

Economic Benefit Worksheet

Respondent AUSTIN EQUIPMENT COMPANY, LC
Case ID No. 35387
Reg. Ent. Reference No. RN104543780
Media Edwards Aquifer
Violation No. 4

Percent Interest	Years of Depreciation
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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	25-Oct-2007	5-Dec-2007	0.1	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to install and maintain proper sediment controls. The Date Required is the investigation date and the Final Date is 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

Approx. Cost of Compliance

\$500

TOTAL

\$3

Screening Date 11-Feb-2008 **Docket No.** 2008-0288-MLM-E **PCW**
Respondent AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*
Case ID No. 35387 *PCW Revision January 29, 2008*
Reg. Ent. Reference No. RN104543780
Media [Statute] Edwards Aquifer
Enf. Coordinator Steven Lopez
Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1) and Edwards Aquifer Water Pollution Abatement Plan No. 05022201, Standard Condition No. 4

Violation Description

Failed to obtain approval of a Water Pollution Abatement Plan modification prior to initiating construction of the modification on the Edwards Aquifer Recharge Zone. Specifically, aggregate washing ponds were constructed without approval.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

Matrix Notes

100 % of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 49 Number of violation days

<i>mark only one with an x</i>	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two monthly events are recommended based on documentation of the violation from the October 25, 2007 investigation to the December 12, 2007 compliance date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$6,350

This violation Final Assessed Penalty (adjusted for limits) \$6,350

Economic Benefit Worksheet

Respondent AUSTIN EQUIPMENT COMPANY, LC
Case ID No. 35387
Reg. Ent. Reference No. RN104543780
Media Edwards Aquifer
Violation No. 5

Percent Interest	Years of Depreciation
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				0.0	\$0	n/a	\$0
Permit Costs	\$1,000	25-Oct-2007	12-Dec-2007	0.1	\$7	n/a	\$7
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit the Water Pollution Abatement Plan for modification approval. The Date Required is the investigation date and the Final Date is 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

Approx. Cost of Compliance

\$1,000

TOTAL

\$7

Compliance History

Customer/Respondent/Owner-Operator:	CN602523250 Austin Equipment Company, LC	Classification: AVERAGE	Rating: 3.50
Regulated Entity:	RN104543780 AUSTIN EQUIPMENT SITE	Classification: AVERAGE	Site Rating: 7.50
<hr/>			
ID Number(s):	EDWARDS AQUIFER	REGISTRATION	11-05022201
	EDWARDS AQUIFER	REGISTRATION	11-05022201A
	EDWARDS AQUIFER	REGISTRATION	11-05022201B
	EDWARDS AQUIFER	REGISTRATION	11-05022201C
	EDWARDS AQUIFER	REGISTRATION	11-05022201B
	EDWARDS AQUIFER	REGISTRATION	11-05022201C
<hr/>			
Location:	501 COUNTY ROAD 344, JARRELL, TX, 76537		Rating Date: September 01 07 Repeat Violator: NO
<hr/>			
TCEQ Region:	REGION 11 - AUSTIN		
<hr/>			
Date Compliance History Prepared:	March 18, 2008		
<hr/>			
Agency Decision Requiring Compliance History:	Enforcement		
<hr/>			
Compliance Period:	March 18, 2003 to March 18, 2008		
<hr/>			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Steven Lopez	Phone:	512-239-1896

Site Compliance History Components

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

Components (Multimedia) for the Site :

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

Effective Date: 03/08/2008	ADMINORDER 2007-1371-EAQ-E
Classification: Moderate	
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)	
Rqmt Prov: ID No. 50222.01 PERMIT	
Description: Failure to maintain a copy of the WPAP on site.	
Classification: Moderate	
Citation: 30 TAC Chapter 213, SubChapter A 213.4(j)(2)	
Description: Failure to obtain approval for site plan modifications.	

- 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 01/08/2007 (519135)

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

Date: 01/09/2007 (519135)	
Self Report? NO	Classification: Moderate
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)	
Description: Failure to maintain a copy of the WPAP and AST on the site.	
Self Report? NO	Classification: Minor
Citation: 30 TAC Chapter 327 327.5(a)	
Description: Failure to immediately abate and contain spills or discharges of petroleum products. A small oil spill, perhaps less than one gallon, was observed near the new rock crusher assembly work area.	

Failure to immediately abate and contain spills or discharges of petroleum products.

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 213, SubChapter A 213.4(k)		
Description:	Failure to maintain temporary sediment controls.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)		
Description:	Failure to update the storm water pollution prevention plan (SWPPP) material inventory for paint, gear oil, etc.		
Date:	04/13/2007 (543456)		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 213, SubChapter A 213.4(k)		
Description:	Failure to maintain a copy of the WPAP and AST on the site.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)		
Description:	Failure to update the storm water pollution prevention plan (SWPPP) material inventory for paint, gear oil, etc.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 213, SubChapter A 213.5(f)(2)(A)		
Description:	Failure to notify the Austin Regional Office of a sensitive feature encountered during regulated activities.		

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



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 SEP 22 AM 11:45
CHIEF CLERKS OFFICE

IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
AUSTIN EQUIPMENT COMPANY, LC
RN104543780

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0288-MLM-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 AUSTIN EQUIPMENT COMPANY, LC ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

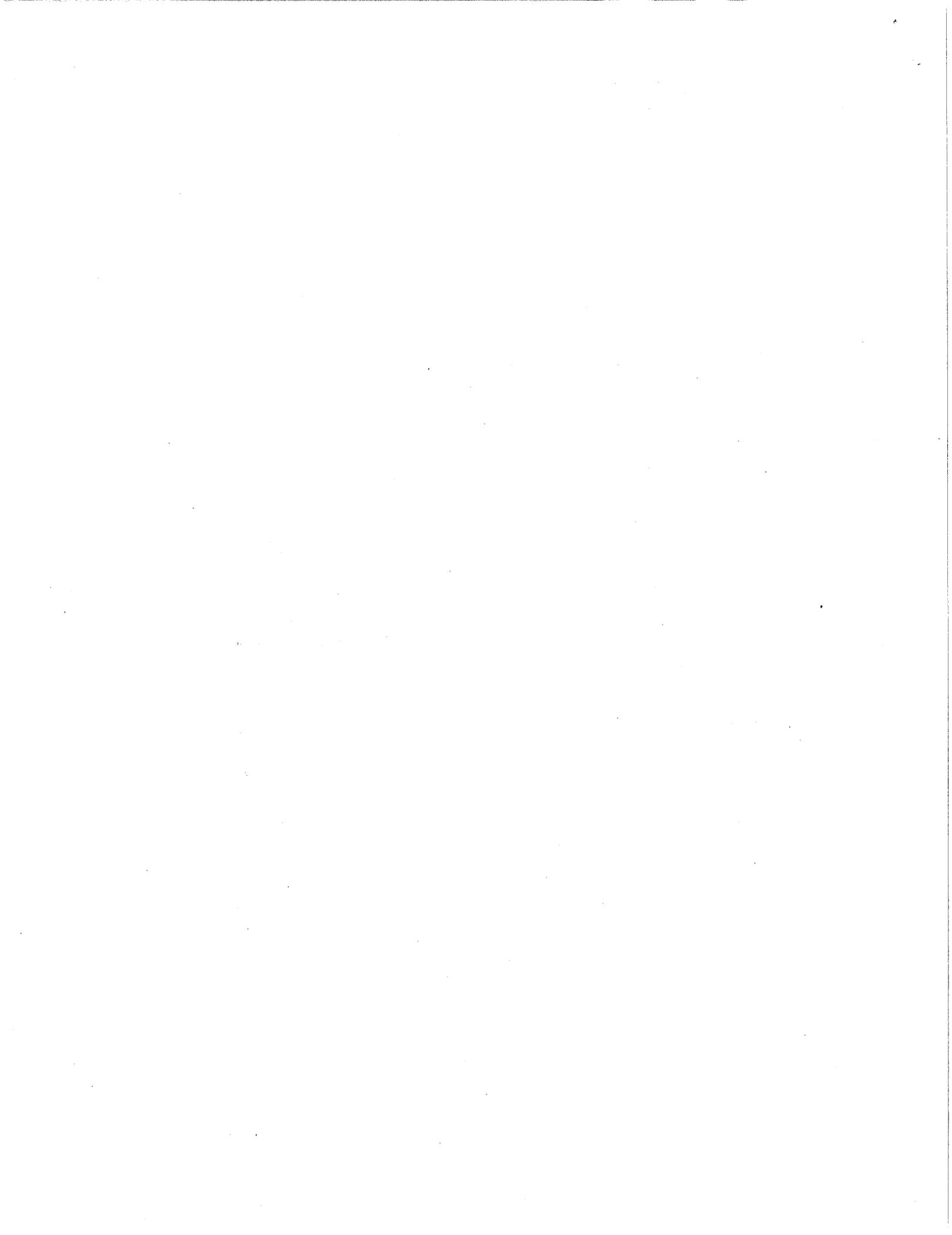
1. The Respondent owns and operates a rock quarry at 501 County Road 344 in Jarrell, Williamson County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 30, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Eighteen Thousand Four Hundred Fifteen Dollars (\$18,415) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Thirty-Two Dollars (\$1,532) of the administrative penalty and Three Thousand Six Hundred Eighty-Three Dollars (\$3,683) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Thirteen Thousand Two Hundred Dollars (\$13,200) of the administrative penalty shall be payable in 11 monthly payments of One Thousand Two Hundred Dollars (\$1,200) 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 the Respondent 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 the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent 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 the Respondent 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 the Respondent has implemented the following corrective measures at the Site:
 - a. On December 5, 2007, the TCEQ Austin Regional Office received documentation verifying that the Respondent moved excavated materials outside of the 50 foot stream buffer;
 - b. On December 5, 2007, the TCEQ Austin Regional Office received documentation verifying that the Respondent installed proper sediment controls; and
 - c. On December 12, 2007, the Respondent received approval for the modification to the Edwards Aquifer Water Pollution Abatement Plan ("WPAP") for the aggregate washing ponds.
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 the Respondent 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.

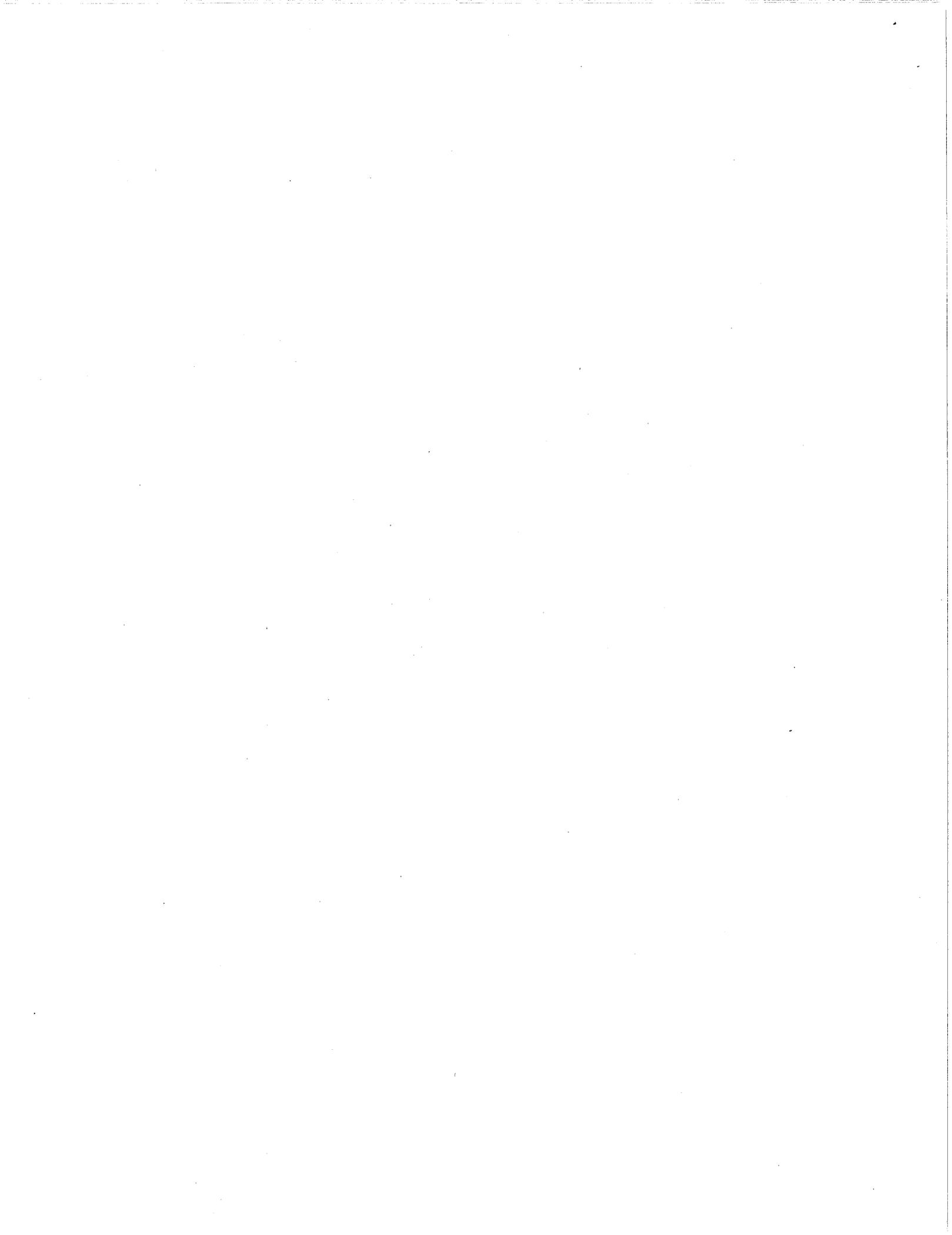
II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to immediately abate and contain spills or releases of oil, in violation of 30 TEX. ADMIN. CODE § 327.5(a), as documented during an investigation conducted on October 25, 2007. Specifically, diesel fuel was observed on the ground near the northeast corner of the quarry pit.
2. Failed to comply with the approved WPAP by allowing vehicle maintenance to be performed outside the shop area, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201, Factors Affecting Water Quality, as documented during an investigation conducted on October 25, 2007. Specifically, vehicle maintenance was being performed in the quarry pit.
3. Failed to prevent regulated activities within a protective 50 foot stream buffer, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201, Permanent Pollution Abatement Measures, as documented during an investigation conducted on October 25, 2007. Specifically, excavated material was placed within the protective 50 foot stream buffer of an unnamed tributary to Salado Creek.
4. Failed to install and maintain temporary sediment controls, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201, Standard Condition No. 6, as documented during an investigation conducted on October 25, 2007. Specifically, in the area between the berm north of the aggregate washing ponds and the unnamed tributary of Salado Creek, sediment controls were missing or inadequate and the south crossing of Salado Creek had no sediment controls.
5. Failed to obtain approval of a WPAP modification prior to initiating construction of the modification, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1) and Edwards Aquifer WPAP No. 05022201, Standard Condition No. 4, as documented during an investigation conducted on October 25, 2007. Specifically, aggregate washing ponds were constructed without approval.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").



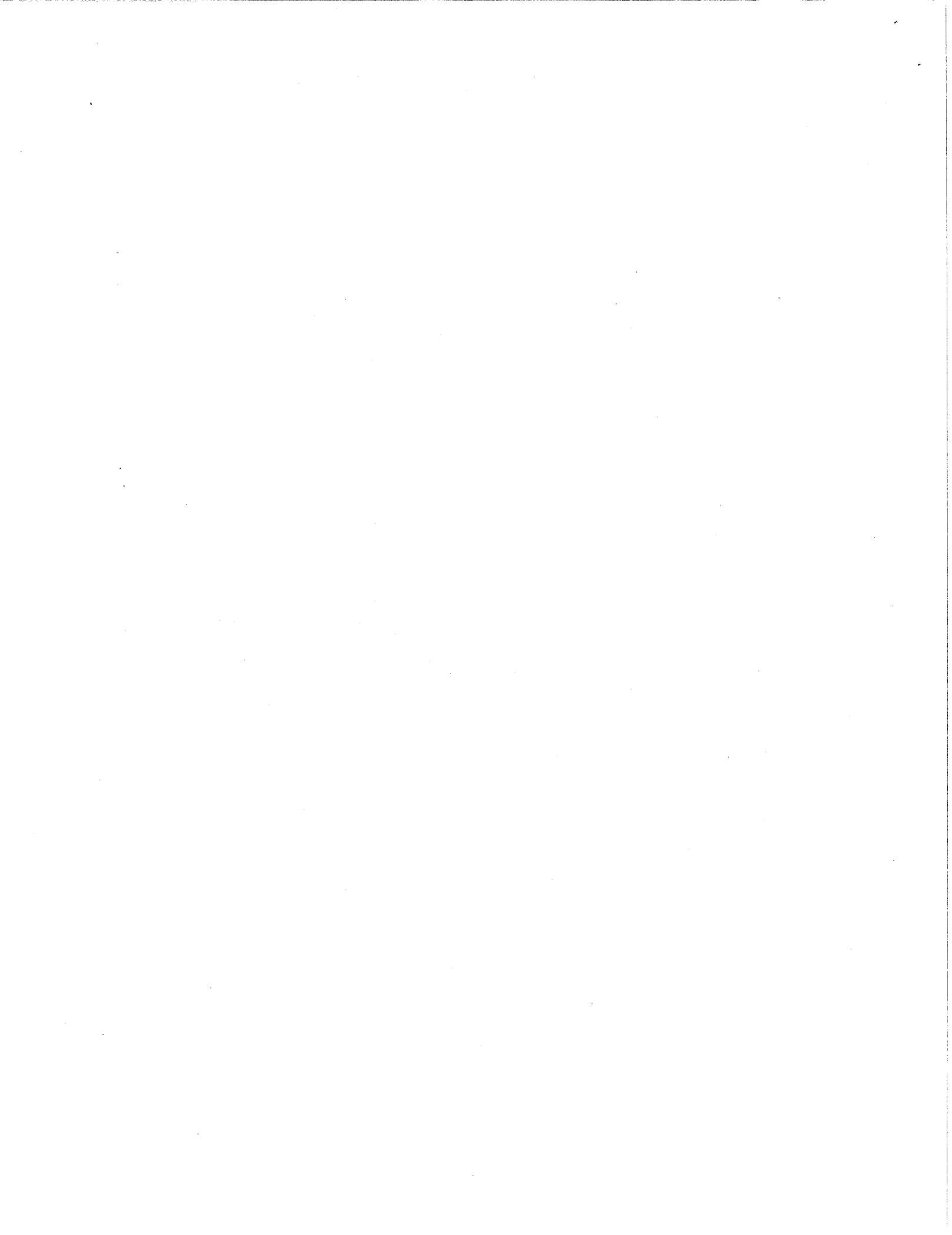
IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: AUSTIN EQUIPMENT COMPANY, LC, Docket No. 2008-0288-MLM-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Agreed Order, provide training to employees on authorized location to conduct all vehicle maintenance, in accordance with 30 TEX. ADMIN. CODE § 213.4 and WPAP No. 05022201;
 - b. Within 30 days after the effective date of this Agreed Order, submit a report which includes a summary of remediation activities that took place, confirming that all contaminated soils at the Site have been properly remediated. Remediation activities will address all areas where stained soils and soils contaminated with diesel, lubricant, and grease spills/stains were observed in the northeast and southeast corners of quarry pit. The report shall include analytical results of soil confirmation sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed in an authorized manner; 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 No. 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 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."



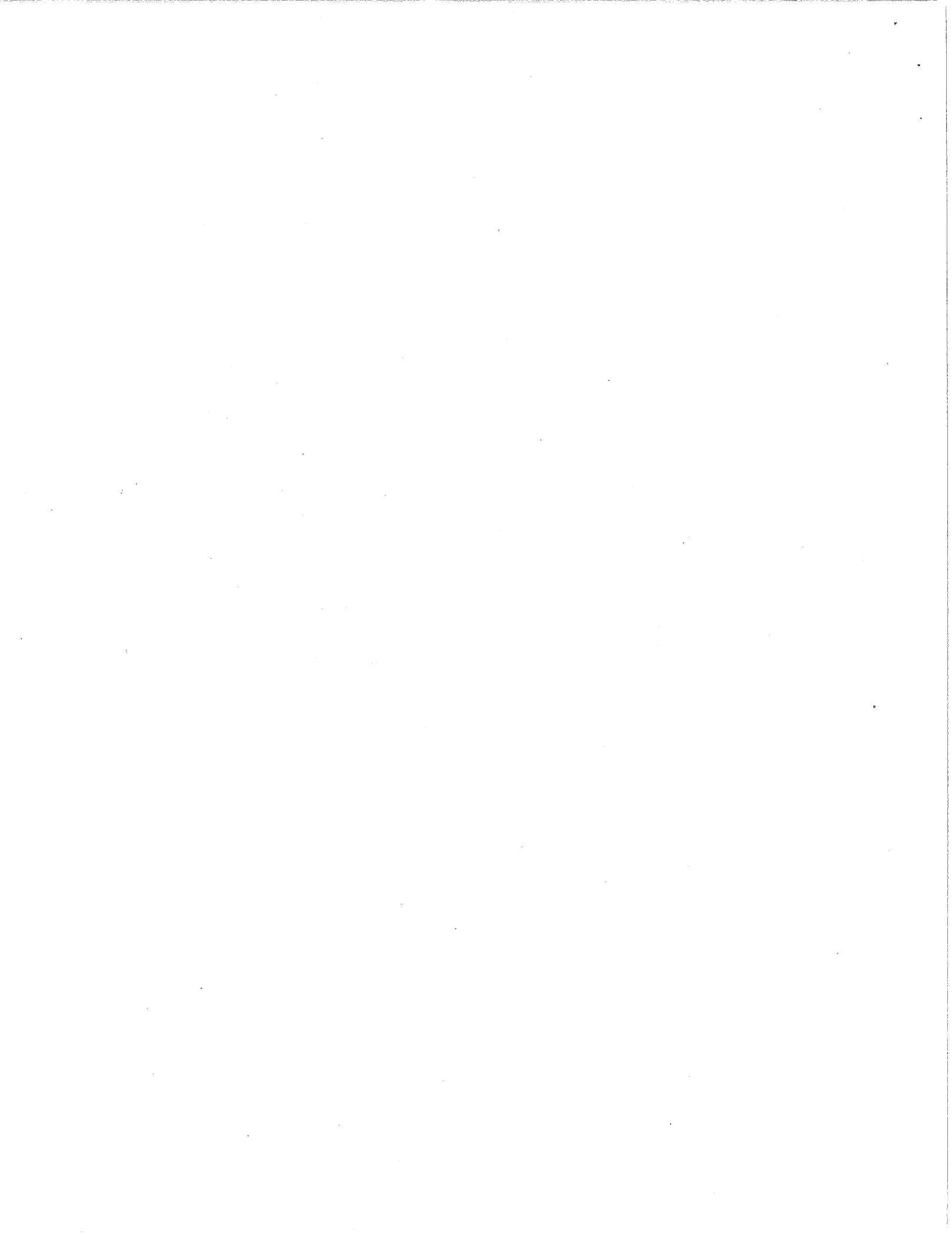
The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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 the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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 the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



AUSTIN EQUIPMENT COMPANY, LC
DOCKET NO. 2008-0288-MLM-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Z. ...
For the Executive Director

9/4/2008
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.

John W. Schuler
Signature

May 31, 2008
Date

John W. Schuler
Name (Printed or typed)
Authorized Representative of
AUSTIN EQUIPMENT COMPANY, LC

Manager
Title

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.

