

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0548-WQ-E TCEQ ID: RN104416722 CASE NO.: 33143
RESPONDENT NAME: ADVANTAGE ASPHALT PRODUCTS, LTD.

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 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 checked="" 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

SITE WHERE VIOLATION(S) OCCURRED: 4241 County Road 22, Claude, Armstrong County

TYPE OF OPERATION: Sand and gravel mining operation

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: TCEQ received two anonymous complaints alleging possible violations of the Stormwater Multi-Sector General Permit. 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 June 9, 2008. A comment was received on June 13, 2008. The comment and TCEQ's response to the comment are enclosed with these Agenda back-up documents..

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Water Enforcement Section, MC 219, (512) 239-2134

TCEQ Regional Contact: Mr. Jim McWilliams, Amarillo Regional Office, MC R-1, (806) 353-9251

Respondent: Mr. Scotty Kintson, Manager, Advantage Asphalt Products, Ltd., 301 South Polk, Amarillo, Texas 79101

Respondent's Attorney: Mr. Brian Smith, Attorney at Law, P. O. Box 9134, Amarillo, Texas 79105-9134

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: November 13 and December 11, 2006</p> <p>Date of Investigation Relating to this Case: March 9, 2007</p> <p>Date of NOE Relating to this Case: March 26, 2007</p> <p>Background Facts: The EDPRP was filed on July 17, 2007. The Respondent filed an Answer on August 20, 2007. The case was referred to SOAH on September 27, 2007. The Preliminary hearing was convened on November 8, 2007. The parties achieved settlement and a signed Agreed Order with initial payment received on April 1, 2008.</p> <p>WQ</p> <p>1. Failed to adequately develop a site map that meets the requirements of the Multi-Sector Industrial General Permit ("MSGP") [30 TEX. ADMIN. CODE § 305.125(1) and MSGP No. TXR05R223, Part III, Section A(4)(c)(1)-(12)].</p> <p>2. Failed to develop and implement erosion control measures and Best Management Practices ("BMPs") to reduce the discharge or potential discharge of pollutants in storm water [30 TEX. ADMIN. CODE § 305.125(1) and MSGP No. TXR05R223, Part III, Sections A(5), (5)(c), and (5)(e), and A(6)(a)].</p> <p>3. Failed to design and describe adequate structural controls in the Storm Water Pollution Prevention Plan ("SWP3") [30 TEX. ADMIN. CODE § 305.125(1) and MSGP No. TXR05R223, Part III, Section A(6)(a)].</p> <p>4. Failed to include a section within the SWP3 regarding a maintenance program for storm water structural controls [30 TEX. ADMIN. CODE § 305.125(1) and MSGP no. TXR05R223, Part III, Section A(5)(d)].</p>	<p>Total Assessed: \$2,205</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$205/\$2,000</p> <p>The Respondent has paid \$205 of the administrative penalty. The remaining amount of \$2,000 of the administrative penalty shall be payable in 10 monthly payments of \$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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days:</p> <p>a. Develop a site map that indicates the location of each outfall covered by the permit, the location of each sampling point (if different than the outfall location), and physical features of the site that influence storm water runoff;</p> <p>b. Develop and implement erosion control measures which effectively divert storm water away from Indian Creek;</p> <p>c. Design and describe adequate structural controls and include a maintenance program for storm water structural controls in the SWP3; and</p> <p>d. Develop and implement BMPs to reduce the discharge or potential discharge of pollutants into Indian Creek.</p> <p>2. Within 45 days, submit written certification of compliance with these Ordering Provisions.</p>



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned PCW	2-Apr-2007	Screening	2-Apr-2007	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	Advantage Asphalt Products, Ltd.
Reg. Ent. Ref. No.	RN104416722
Facility/Site Region	1 - Amarillo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33143	No. of Violations	4
Docket No.	2007-0548-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Suzanne Walrath
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$2,100

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement **Subtotals 2, 3, & 7** \$105

Notes The respondent received one NOV for same or similar violations.

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

Total EB Amounts	\$824	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,000	

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$2,205

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

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

Notes

Final Penalty Amount \$2,205

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$2,205

DEFERRAL 0% Reduction **Adjustment** \$0

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

Notes

Deferral not offered, as this case is a direct referral to the Litigation Division.

PAYABLE PENALTY \$2,205

Screening Date 2-Apr-2007

Docket No. 2007-0548-WQ-E

PCW

Respondent Advantage Asphalt Products, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33143

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN104416722

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	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) 5%

>> 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 NOV for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 2-Apr-2007

Docket No. 2007-0548-WQ-E

PCW

Respondent Advantage Asphalt Products, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33143

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN104416722

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) Multi-Sector Industrial General Permit ("MSGP") No. TXR05R223, Part III, Section A(4)(c)(1)-(12)

Violation Description Failed to adequately develop a site map that meets the requirements of the MSGP. Specifically, the map submitted by the facility does not indicate the location of each outfall covered by the permit, the location of each sampling point (if different than the outfall location), and physical features of the site that influences storm water runoff.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
			X	1%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 1

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$35

Violation Final Penalty Total \$105

This violation Final Assessed Penalty (adjusted for limits) \$105

Economic Benefit Worksheet

Respondent Advantage Asphalt Products, Ltd.
Case ID No. 33143
Reg. Ent. Reference No. RN104416722
Media Water Quality
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
<small>No commas or \$</small>							

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	\$500	9-Mar-2007	31-Jul-2008	1.4	\$35	n/a	\$35
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

This is the estimated cost to modify the site map to meet MSGP requirements. The date required is the date of investigation, and the final date is the projected 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

\$35

Screening Date 2-Apr-2007

Docket No. 2007-0548-WQ-E

PCW

Respondent Advantage Asphalt Products, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33143

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN104416722

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), MSGP No. TXR05R223, Part III, Section A(5), (5)(c), (5)(e), and A(6)(a)

Violation Description

Failed to develop and implement erosion control measures and Best Management Practices ("BMPs") to reduce the discharge or potential discharge of pollutants in storm water. Specifically, the facility indicated that the man-made dam is the major storm water control structure, which is not acceptable, and they also indicated that the man-made dam and unstabilized sand/gravel and native soil berms are the BMPs, neither of which are acceptable practices to reduce the inflow of pollutants into Indian Creek. Additionally, the berms are eroded with rainfall, and fail to effectively divert storm water away from Indian Creek.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					10%
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 may exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 24

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended beginning on the investigation date (3/9/07) to case screening date (4/2/07).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$720

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent: Advantage Asphalt Products, Ltd.
Case ID No.: 33143
Reg. Ent. Reference No.: RN104416722
Media: Water Quality
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
<i>No commas or \$</i>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$7,000	9-Mar-2007	31-Jul-2008	1.4	\$33	\$652	\$685
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	9-Mar-2007	31-Jul-2008	1.4	\$35	n/a	\$35

Notes for DELAYED costs

This is the estimated cost to develop and implement erosion control measures, and BMPs in the MSGP at the facility. The date required is the date of the investigation, and the final date is the projected 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

\$7,500

TOTAL

\$720

Screening Date 2-Apr-2007

Docket No. 2007-0548-WQ-E

PCW

Respondent Advantage Asphalt Products, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33143

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN104416722

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), MSGP No. TXR05R223, Part III, Section A(6)(a)

Violation Description

Failed to design and describe adequate structural controls in the Storm Water Pollution Prevention Plan ("SWP3"). Specifically, the facility contends that the man-made dam and earthen berms (unstabilized sand/gravel or other native soil berms) are adequate storm water control structures.

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 5%

Matrix Notes

Less than 70%, but more than 30% of the rule requirement was not met.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$35

Violation Final Penalty Total \$525

This violation Final Assessed Penalty (adjusted for limits) \$525

Economic Benefit Worksheet

Respondent Advantage Asphalt Products, Ltd.
Case ID No. 33143
Reg. Ent. Reference No. RN104416722
Media Water Quality
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
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	\$500	9-Mar-2007	31-Jul-2008	1.4	\$35	n/a	\$35
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

This is the estimated cost to design and describe adequate structural controls in the SWP3. The date required is the date of the investigation, and the final date is the projected 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

\$35

Screening Date 2-Apr-2007

Docket No. 2007-0548-WQ-E

PCW

Respondent Advantage Asphalt Products, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33143

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN104416722

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), MSGP No. TXR05R223, Part III, Section A(5)(d)

Violation Description

Failed to include a section within the SWP3 regarding a maintenance program for storm water structural controls. Specifically, the facility indicated that a maintenance program would be incorporated into the quarterly inspection protocols, but did not provide any documentation that this had been accomplished.

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 5%

Matrix Notes

Less than 70%, but more than 30% of the rule requirement was not met.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

1 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$35

Violation Final Penalty Total \$525

This violation Final Assessed Penalty (adjusted for limits) \$525

Economic Benefit Worksheet

Respondent Advantage Asphalt Products, Ltd.
Case ID No. 33143
Reg. Ent. Reference No. RN104416722
Media Water Quality
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
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	\$500	9-Mar-2007	31-Jul-2008	1.4	\$35	n/a	\$35
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 This is the estimated cost to include a section within the SWP3 regarding a maintenance program for storm water structural controls. The date required is the date of the investigation, and the final date is the projected 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
 (Empty box for notes)

Approx. Cost of Compliance \$500 TOTAL \$35

Compliance History

Customer/Respondent/Owner-Operator: CN601535529 ADVANTAGE ASHPALT PRODUCTS, Classification: AVERAGE Rating: 11.30
LTD
Regulated Entity: RN104416722 ADVANTAGE ASPHALT PRODUCTS Classification: AVERAGE Site Rating:
AMARILLO
ID Number(s): STORMWATER PERMIT TXR05R223
Location: 4241 COUNTY ROAD 22, AMARILLO, TX, 79109 Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region: REGION 01 - AMARILLO
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: Suzanne Walrath Phone: 512/239-2134

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? N/A
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 06/05/2005 (344340)
2 03/26/2007 (540278)

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

Date: 08/14/2006 (484108)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT MSGP, Part III, Section A(4)(c)(1)-(12)

Description: The facility failed to provide an adequate response by the compliance due date to an alleged violation for failure to develop a site map that meets the requirements of the MSGP, Part III, Section A(4)(c)(1) and (10).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT MSGP Part III, Section C 5(a)

Description: The facility has failed to document conditions that prevented the collection of storm water samples for quarterly visual examination.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT MSGP Part III, Section A 5 and 5(c).

Description: The facility has failed to provide an adequate response by the compliance due date to an alleged violation for the failure to develop and implement erosion control measures at the site.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT MSGP Part III, Section A, 6(a)

Description: The facility has failed to provide an adequate response by the compliance due to an alleged violation for failure to design and describe adequate controls in SWP3.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov: PERMIT MSGP Part III, Section A, 5(d)

Description: The facility has failed to respond by the compliance due date for a alleged violation of failure to develop and implement a Maintenance Program for Structural Controls.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov: PERMIT MSGP Part III, Section A, 5(e)

Description: The facility has failed to provide an adequate response by the compliance due date to an alleged violation for failure to develop and implement Best Management Practices (BMPs) to reduce the discharge or potential discharge of pollutants in storm water.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Rqmt Prov: PERMIT MSGP Part V, Section J(3)

Description: On July 11, 2006, the operator of a front loader at the facility's sand and gravel site was observed scraping/scooping up storm water that had ponded in the operational area and disposing of the storm water by dumping it down the sloping face on the west side of the operational area.

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.

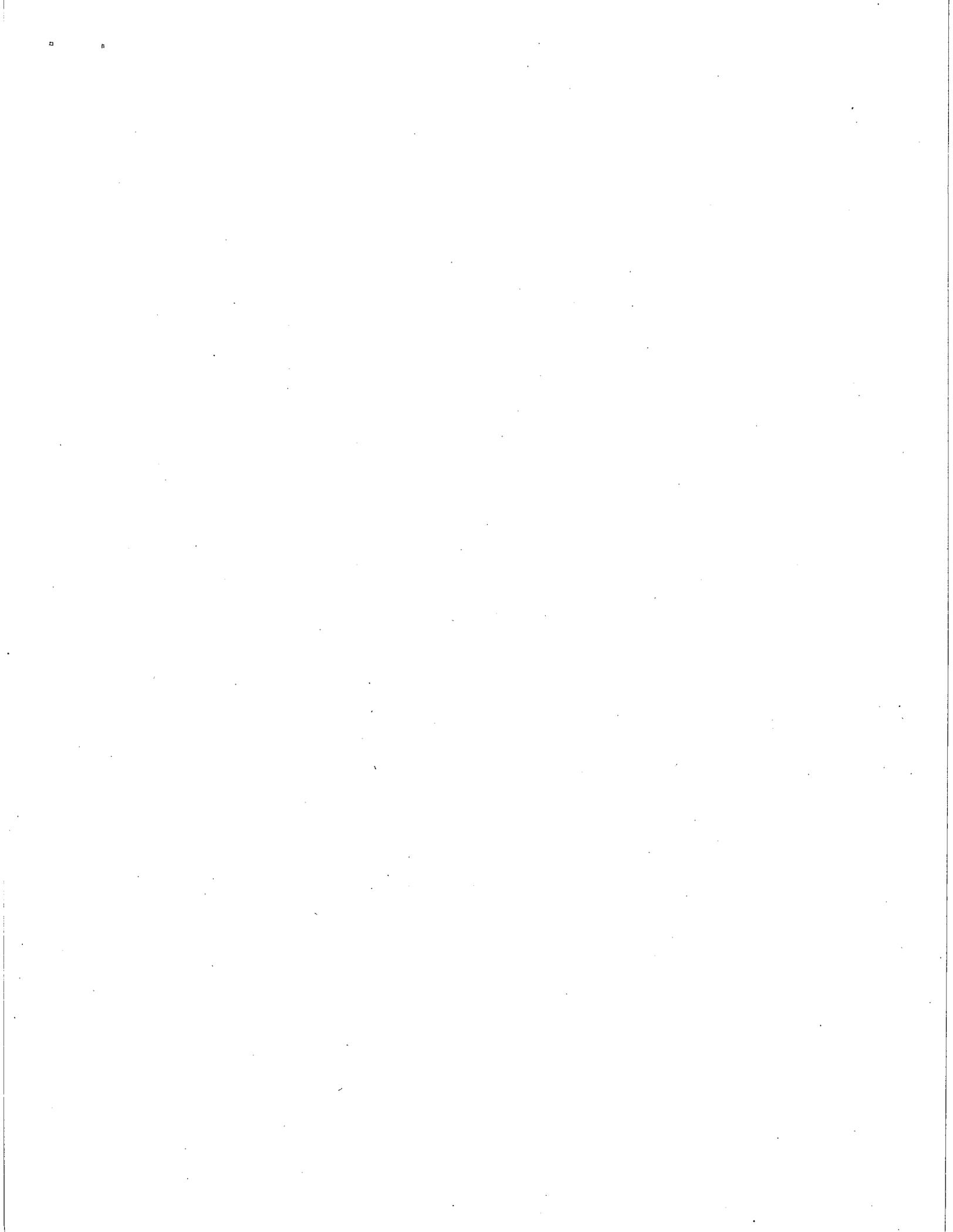
N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ADVANTAGE ASPHALT
PRODUCTS, LTD.,
RN104416722

§
§
§
§
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§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0548-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Advantage Asphalt Products, Ltd. ("Advantage Asphalt") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Advantage Asphalt represented by Brian R. Smith, Attorney at Law, appear before the Commission and together stipulate that:

1. Advantage Asphalt operates a sand and gravel mining operation located at 4241 County Road 22, Claude, Armstrong County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Advantage Asphalt agree that the Commission has jurisdiction to enter this Agreed Order, and that Advantage Asphalt is subject to the Commission's jurisdiction.
4. Advantage Asphalt received notice of the violations alleged in Section II ("Allegations") on or about August 19, 2006 and March 31, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Advantage Asphalt of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of two thousand two hundred five dollars (\$2,205.00) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). Advantage has paid two hundred five dollars (\$205.00) of the administrative penalty. The remaining amount of two thousand dollars (\$2,000.00) of the administrative penalty shall be payable in ten monthly payments of two hundred dollars (\$200.00) 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 Advantage Asphalt fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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 Advantage Asphalt to meet the payment schedule of this Agreed Order constitutes the failure by Advantage Asphalt to timely and satisfactorily comply with all of 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 Advantage Asphalt 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 Advantage Asphalt 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

Advantage Asphalt is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 305.125(1) and Multi-Sector Industrial General Permit ("MSGP") No. TXR05R223, Part III, Section A(4)(c)(1)-(12) by failing to adequately develop a site map that meets the requirements of the MSGP as documented on March 9, 2007. Specifically, the map submitted by Advantage Asphalt does not indicate the location of each outfall covered by the permit, the location of each sampling point (if different than the outfall location), and physical features of the site that influence storm water runoff

2. 30 TEX. ADMIN. CODE § 305.125(1) and MSGP No. TXR05R223, Part III, Sections A(5), (5)(c), and (5)(e), and A(6)(a) by failing to develop and implement erosion control measures and Best Management Practices (“BMPs”) to reduce the discharge or potential discharge of pollutants in storm water as documented on March 9, 2007. Specifically, Advantage Asphalt indicated that the man-made dam is the major storm water control structure, which is not acceptable, and Advantage Asphalt also indicated that the man-made dam and unstabilized sand/gravel and the native soil berms are the BMPs, neither of which are acceptable practices to reduce the inflow of pollutants into Indian Creek. Additionally, the berms are eroded with rainfall, and fail to effectively divert storm water away from Indian Creek.
3. 30 TEX. ADMIN. CODE § 305.125(1) and MSGP No. TXR05R223, Part III, Section A(6)(a) by failing to design and describe adequate structural controls in the Storm Water Pollution Prevention Plan (“SWP3”) as documented on March 9, 2007. Specifically, Advantage Asphalt contends that the man-made dam and the earthen berms (unstabilized sand/gravel or other native soil berms) are adequate storm water control structures.
4. 30 TEX. ADMIN. CODE § 305.125(1) and MSGP No. TXR05R223, Part III, Section A(5)(d) by failing to include a section within the SWP3 regarding a maintenance program for storm water structural controls as documented on March 9, 2007. Specifically, Advantage Asphalt indicated that a maintenance program would be incorporated into the quarterly inspection protocols, but did not provide any documentation that this had been accomplished.

III. DENIALS

Advantage Asphalt generally denies each allegation in Section II (“Allegations”).

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Advantage Asphalt pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Advantage Asphalt’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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Advantage Asphalt Products, Ltd., Docket No. 2007-0548-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. Advantage Asphalt shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, Advantage Asphalt shall develop a site map that indicates the location of each outfall covered by the permit, the location of each sampling point (if different than the outfall location), and physical features of the site that influence storm water runoff in accordance with the Multi-Sector Industrial General Permit ("MSGP") No. TXR05R223 requirements;
 - b. Within 30 days after the effective date of this Agreed Order, Advantage Asphalt shall develop and implement erosion control measures which effectively divert storm water away from Indian Creek, in accordance with the MSGP No. TXR05R223 requirements;
 - c. Within 30 days after the effective date of this Agreed Order, Advantage Asphalt shall design and describe adequate structural controls and include a maintenance program for storm water structural controls in the Stormwater Water Pollution Prevention Plan ("SWP3"), in accordance with the MSGP No. TXR05R223 requirements;
 - d. Within 30 days after the effective date of this Agreed Order, Advantage Asphalt shall develop and implement Best Management Practices to reduce the discharge or potential discharge of pollutants into Indian Creek, in accordance with the MSGP requirements; and
 - e. Within 45 days after the effective date of the Commission Order, Advantage Asphalt shall submit written certification of compliance with Ordering Provisions 2.a. through 2.d. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, 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

and

Jim McWilliams, Water Section Manager
Texas Commission on Environmental Quality
Amarillo Regional Office
3918 Canyon Drive
Amarillo, Texas 79109-4933

3. The provisions of this Agreed Order shall apply to and be binding upon Advantage Asphalt. Advantage Asphalt 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 Advantage Asphalt 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, Advantage Asphalt's failure to comply is not a violation of this Agreed Order. Advantage Asphalt shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Advantage Asphalt shall notify the Executive Director within seven days after Advantage Asphalt 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 Advantage Asphalt shall be made in writing to the Executive Director. Extensions are not effective until Advantage Asphalt 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 Advantage Asphalt 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.

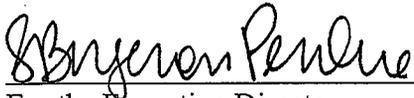
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to, or three days after the date on which the Commission mails notice of the Order to Advantage Asphalt, 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

5/27/08

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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



Signature

4/8/08

Date

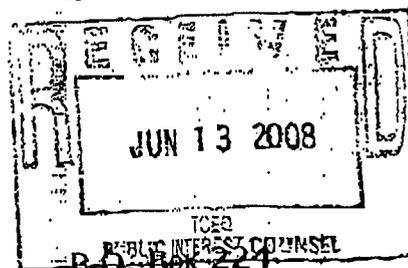


Name (Printed or typed)

manager

Title

Authorized representative of
Advantage Asphalt Products, Ltd.



Fischer, TX 78623
830-935-2898
May 29, 2008

RE: Comment on TCEQ Docket 2007-0548-WQ-E

Alfred Oloko, Staff Attorney
Texas Commission on Environmental Quality
MC175
PO Box 13087
Austin, Texas 78711-3087

Dear Mr. Oloko:

This letter (with photographic documentation) is to comment on the Agreed Orders regarding the enforcement action against Advantage Asphalt Products, Ltd.; TCEQ Docket No. 2007-0548-WQ-E. *Proposed*

History and extent of previous violations:

1. Advantage Asphalt Products, Ltd. of Amarillo, Texas opened a rock crushing operation in 2003 in Potter County without prior authorization. Advantage Asphalt has a history and pattern of operating without TCEQ issued permits and of violating the terms of the permits in three counties. The 2003 example occurred in Potter County: SOAH Docket 582-04-8905; TCEQ Docket 2003-1310-AIR-E resulted because Advantage Asphalt Products operated a rock crushing plant without authorization, west of Amarillo, with investigations on Jan. 17 and 21, 2003. HB 2921 mandated a \$10,000 a day fine for such violations. An agreed order was entered and approved by the Commissioners on June 29, 2005, some 27 months after the investigation of the violations. The owner of Advantage Asphalt Products ignored TCEQ demands for resolution until a possible default order was imminent. Twenty-seven months later on March 3, 2005 the company signed a settlement letter and made payment of \$750. Documentation in TCEQ Central Files shows the company relied on the various time-lapses available through TCEQ procedures to delay settlement.

A well documented pattern of misbehavior by Advantage Asphalt Products shows ignoring and/or disregard for the Notice of Violations and orders to come into compliance within the prescribed times by TCEQ rules.

As of May 29, 2008, Advantage Asphalt has additional enforcement proceedings in process:

2. SOAH Docket No. 582-07-2484; TCEQ Docket 2006-1434-AIR-E regarding the unauthorized and unpermitted addition of an impact rock crusher and two power screens in the Armstrong County, Stockett Pit. Other violations also include no spraying to control dust and fugitive particulate matter. These violations were documented by TCEQ in Nov. 2005 through May 2006. A Feb. 13 hearing was conducted by Judge Penny Wilkov who issued a Proposal for Decision and Order (May 1, 2008) for TCEQ's consideration. It is pending without a date set for the Commissioner's Agenda.
3. SOAH Docket No. 582-08-0523; TCEQ Docket No. 2007-0768-AIR-E. For the second time, Advantage Asphalt Products opened a pit without authorization and permits. The suggested penalty for operating the Randall County Pit without authorization is meager. When considered together, the actions of this company require that TCEQ levy amounts necessary to deter future violations. Is ignorance of TCEQ requirements to be overlooked a second time when considering the penalties?
4. SOAH Docket No. 582-07-2484; TCEQ Docket 2007-0548-WQ-E -- Storm water violations were documented and investigated in May and June of 2006 and March 2007 for the Stockett Pit in Armstrong County.

In the current "Executive Director's Preliminary Report and Petition Recommending that the TCEQ Enter an Enforcement Order Assessing an Administrative Penalty Against Certain Actions of Advantage Asphalt Products, Ltd." (the EDPRP) certain factors are to be considered:

- *Gravity of prohibited act*
- *History and extent of previous violations*
- *Economic benefit by violation*
- *Amount necessary to deter future violations.*

The pattern of Advantage Asphalt is to plead "poor country boy, no lawyer, I didn't know better, I won't do it again." It has taken a great deal of Region I staff time and resources along with state level enforcement staff to bring these violations to the commission's agenda. The Office of the Texas State Auditor's Report of Dec. 2003, details the loss of income to the state when violator's are not dealt with in a timely manner and are not given the maximum penalties allowed. This company has circumvented the process of enforcement and delayed through a variety of excuses, including lack of legal representation or calendar mix-ups. The gravity of the 2003 violations of operating a rock crusher without permit resulted in only a \$750 fine. From

2003 to 2008, Advantage Asphalt Products should have known the rules and regulations pursuant to the TEX. WATER CODE under which it was permitted. As documented by the 25 digital photos enclosed with this letter, Advantage Asphalt continues (as May 29, 2008) to disregard the development of and implementation of erosion control measures. The berms continued to be eroded by rainfall. The company continues to ignore the requirement to divert storm water away from Indian Creek. Advantage Asphalt Products received notice on Aug. 19, 2006 and March 31, 2007 to bring its operations into compliance with the Texas Water Code and TCEQ rules. It has not done so at the writing of this written public comment letter. The photos enclosed clearly show the conditions that have gotten more destructive and damaging to Indian Creek.

Additionally, since ^{Spring} ~~April~~, 2008, a new gravel mining operation has been opened west of the Stockett Pit in Armstrong County. It is located on the Gerald Wood property west of the Stockett Pit. Not only are the prior violations and damage continuing to Indian Creek, but another ridge to the west (with an un-named tributary of the Mulberry Creek), is being mined in the same manner with new violations of the Texas Water Code and TCEQ regulations. Region I Field Representative has no record nor knowledge of an amendment, revision, or new application for a Multi-Sector Industrial General Permit to open a new pit mining area which will cause pollution of additional tributaries of water.

By opening a new mining pit through a lease with additional land owners in Armstrong County, Advantage Asphalt Products, repeats the history of illegal, unpermitted operations and of asking "forgiveness" after the fact; after violations are committed; after TCEQ invests years of staff time in investigations, hearings, and administrative orders. The violations history of Advantage Asphalt Products is documented in all three counties (Potter, Randall, and Armstrong) in which it operates. Advantage Asphalt Products uses every loop-hole available to ignore, resist, and prevent compliance. The three docket cases pending are evidence of that.

Amount necessary to deter future violations: The suggested penalty for is \$2,205. When the three current docket cases are considered together, the actions of this company require that TCEQ levy amounts necessary to deter future violations. TCEQ should investigate the opening of the new Wood Pit in Armstrong County and demand it meet all requirements of a Multi-Sector Industrial General Permit immediately or to cease operations. A pending penalty of \$2,205 does not deter Advantage Asphalt Products. Since 2003, the company has violated TCEQ

requirements when operating 4 gravel mining pits in three counties. The company delays compliance with legal maneuvers to avoid operation according to TCEQ standards.

I encourage the Commissioners to consider and weigh carefully their own standards and criteria in seeking the maximum administrative penalty in order to bring this company into compliance and to protect the citizens and environment of the State of Texas.

Sincerely,

Peggy Meathenia

Peggy Meathenia

Cc: Blas Coy, Public Interest Counsel

Attachment with 25 photos & text

Attachment:**Text and Twenty-five Photographs**

**Documenting Advantage Asphalt Products, Ltd. Stockett and Wood Pits
TCEQ Docket 2007-0548-WQ-E**

1. Beginning 1-24-04, photographic evidence shows the violation of TCEQ regulations concerning the Stockett Pit operated in Armstrong County by Advantage Asphalt Products, LTD. Advantage Asphalt Products did not apply for TPDES Multi-Sector General Permit for Industrial Storm Water Discharge until 02-03-04. Mining operations were active on the east side of Indian Creek by fall, 2003. Indian Creek is one of the named tributaries that ultimately merges with the Red River.
2. By November, 2005, mining had moved from the east side to the west side of Indian Creek. Mining has continued on both sides of Indian Creek up to this point in time. Both sides of Indian Creek have had discarded materials dumped above the creek bed both below and above the dam road that had been constructed by Advantage Asphalt Products. There is no evidence of containment for storm water run-off, prevention of erosion of loose or waste materials (sand, gravel, rock) into the creek channel or bed.
3. Photos made in 2006 show the significant dumping of waste materials on east and west banks above and below the dam. Above the dam (to the south) the original creek banks were covered with dumped materials. All signs of native vegetation and original soil disappeared under the dumped materials. TCEQ investigated possible storm water violations in June and July 2006 with a NOV issued 11-14-06. Advantage Asphalt Products did not make any visible changes in the mining operations to come into compliance. The dumping of thousands of tons of waste materials increased on both sides of Indian Creek. Erosion became more extreme and evident. The dam road widened.
4. By 2007, the area that was Indian Creek bed and channel became merely a depression between the east and west mining areas above the dam. A March 9, 2007 TCEQ investigation resulted in another NOV on 3-31-07. Again, the photos showing the NOV violations identified by TCEQ were ignored. Throughout 2007, Advantage Asphalt Products continued to discharge pollutants and the storm water. Berms eroded with rain-fall. Indian Creek above the dam probably is not now a functional tributary of Mulberry Creek, but merely a holding tank above dam.
5. Early spring, 2008, the mining operation of Advantage Asphalt Products has moved west to an area located on Gerald Wood's property, not permitted for mining activities. Both Indian Creek and

TCEQ OPIC

Fax:512-239-6377

Aug 4 2008 02:52pm P006/006

numerous un-named tributaries to the west are impacted by the change of operations. As the mining operations progress west on the Wood Pit, the un-named tributaries running into Mulberry Creek will receive storm water and waste materials. As of 5-27-08, TCEQ staff are unaware of the changes of location and had no knowledge of a new application, revision, or modifications to the existing Multi-Sector Industrial General Permit TXR50R233. Again, Advantage Asphalt Products has aggressively changed it operations without prior knowledge and approval as required by TCEQ regulations. Advantage Asphalt Products as documented in these 25 photos has disregarded TCEQ efforts to bring their operations into compliance with state laws protecting the citizens and environment of the State of Texas.

Respectfully submitted,

May 29, 2008

Peggy Meathenia

PO Box 224

Fischer, TX 78623

Peggy Meathenia

August 19, 2008

Ms. Peggy Maethenia
P. O. Box 224
Fischer, Texas 78623

Re: Comment on Agreed Order in Docket No. 2007-0548-WQ-E
Advantage Asphalt Products, Ltd

Dear Ms. Maethenia:

I received your letter of May 29, 2008, on the above subject matter. I thank you for taking interest in the work that we do at the Texas Commission on Environmental Quality (TCEQ) and for your commitment to helping to protect the environment. I will like to respond to some of the issues you raised in your letter. This response is delayed because I did not receive the letter. Although the letter was addressed to me, I only received a copy of the letter from the Office of Public Interest Counsel on August 4, 2008.

In your letter, you referred to other enforcement actions, either pending or concluded, that the TCEQ has with Advantage Asphalt Products, Ltd. The TCEQ is seeking to impose or has imposed various penalty amounts on Advantage Asphalt Products, Ltd. for the violations that are the subject of those enforcement actions. I will therefore focus on your comment regarding the case with TCEQ Docket No. 2007-0548-WQ-E.

In the main, you expressed dissatisfaction with the penalty amount that the TCEQ is seeking to impose on Advantage Asphalt Products, Ltd. It is your opinion that the penalty amount of two thousand two hundred five dollars (\$2,205) will not be enough to deter future violations. I appreciate your concern and interest in advocating penalty amounts that, in your opinion, will serve as enough deterrence for environmental violators. The TCEQ shares your concerns and seeks not only to impose penalties but also require corrective actions to bring the regulated entity into compliance and protect the environment. The penalty amount in the case in point is justified and consistent with the September 1, 2002 TCEQ Penalty Policy. Penalties are not imposed arbitrarily. The TCEQ follows the matrices laid out in the Penalty Policy in order to ensure that the regulated community is treated fairly, equally, and consistently.

With regards to your claims of continuing violations and other violations in other sites owned or operated by Advantage Asphalt, you may provide that information to the

Ms. Peggy Maethenia

August 19, 2008

Page 2

Amarillo Regional Office of the TCEQ so that they can initiate an investigation of those claims. I am confident that in the event that the region finds any violations during their investigation of your claims, additional enforcement actions will be initiated against Advantage Asphalt Products, Ltd.

I hope this letter addresses the issues you raised in your letter. In the event that you have any other questions or concerns, I can be reached at (713) 422-8918.

Yours truly,

A handwritten signature in cursive script, appearing to read "alfred oloko".

Alfred A. Oloko