

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-0774-IWD-E **TCEQ ID:** RN100670983 **CASE NO.:** 35865
RESPONDENT NAME: TXI Operations, LP

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
<p>SITE WHERE VIOLATION(S) OCCURRED: Texas Industries Spangler Shop, 10610 Spangler Road, Dallas County</p> <p>TYPE OF OPERATION: Concrete batch plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 8, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lauren Smitherman, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-5223; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. James B. Rogers, Vice President, Consumer Products, TXI Operations, LP, 1341 West Mockingbird Lane, Dallas, Texas 75247 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Record Review Relating to this Case: March 26, 2008</p> <p>Date of NOE Relating to this Case: May 2, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with the permitted effluent limitations for total suspended solids and oil and grease [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110184, Permit Requirements Part III Section A].</p>	<p>Total Assessed: \$4,950</p> <p>Total Deferred: \$990 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$3,960</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 Order will require the Respondent to within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES General Permit No. TXG110184, Permit Requirements Part III Section A, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): TXG110184



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

TCEQ

DATES	Assigned	5-May-2008	Screening	8-May-2008	EPA Due	
	PCW	8-May-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	TXI Operations, LP
Reg. Ent. Ref. No.	RN100670983
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35865	No. of Violations	1	
Docket No.	2008-0774-IWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Lauren Smitherman	
Multi-Media		EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	65.0% Enhancement	Subtotals 2, 3, & 7	\$1,950
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Notes Penalty enhanced due to 13 self-reported effluent violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0.0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Subtotal 6	0.0% Enhancement*	\$0
Total EB Amounts	\$527	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,950
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$4,950

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,950
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DEFERRAL	20.0% Reduction	Adjustment	-\$990
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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	\$3,960
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Screening Date 8-May-2008	Docket No. 2008-0774-IWD-E	PCW
Respondent TXI Operations, LP		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35865		<i>PCW Revision April 29, 2008</i>
Reg. Ent. Reference No. RN100670983		
Media [Statute] Water Quality		
Enf. Coordinator Lauren Smitherman		

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	<i>Enter Number Here</i>	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action <i>(number of NOV's meeting criteria)</i>	13	65%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 65%

>> **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 Penalty enhanced due to 13 self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 65%

Screening Date 8-May-2008	Docket No. 2008-0774-IWD-E	PCW
Respondent TXI Operations, LP	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 35865	<small>PCW Revision April 29, 2008</small>	
Reg. Ent. Reference No. RN100670983		
Media [Statute] Water Quality		
Enf. Coordinator Lauren Smitherman		
Violation Number 1		
Rule Cite(s)	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110184, Permit Requirements Part III Section A	
Violation Description	Failed to comply with the permitted effluent limitations, as shown in the attached violation table.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes As a result of these discharges, 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.

Adjustment	\$9,000
Base Penalty	
\$1,000	

Violation Events

Number of Violation Events <input type="text" value="3"/>	<input type="text" value="153"/>	Number of violation days												
<small>mark only one with an x</small>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">monthly</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">quarterly</td><td style="text-align: center;"><input checked="" type="checkbox"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">annual</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">single event</td><td style="text-align: center;"><input type="checkbox"/></td></tr> </table>	daily	<input type="checkbox"/>	monthly	<input type="checkbox"/>	quarterly	<input checked="" type="checkbox"/>	semiannual	<input type="checkbox"/>	annual	<input type="checkbox"/>	single event	<input type="checkbox"/>	
daily	<input type="checkbox"/>													
monthly	<input type="checkbox"/>													
quarterly	<input checked="" type="checkbox"/>													
semiannual	<input type="checkbox"/>													
annual	<input type="checkbox"/>													
single event	<input type="checkbox"/>													
Violation Base Penalty		\$3,000												

Three quarterly events are recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$527"/>	Violation Final Penalty Total <input type="text" value="\$4,950"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,950"/>	

Economic Benefit Worksheet

Respondent TXI Operations, LP
Case ID No. 35865
Reg. Ent. Reference No. RN100670983
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$10,000	1-May-2007	31-Jan-2008	0.75	\$25	\$502	\$527
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to evaluate and identify problems and implement corrective actions. The date required is the first month of non-compliance. The final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$527

EFFLUENT VIOLATION TABLE		
TXI Operations, LP		
TPDES General Permit No. TXG110184		
Docket No. 2008-0774-IWD-E		
	TSS Daily Max. Conc.	Oil and Grease Daily Max. Conc.
Months	Limit = 65 mg/L	Limit = 15 mg/L
5/31/2007	c	20
6/30/2007	73	c
7/31/2007	95	c
9/30/2007	c	37
12/31/2007	120	c
mg/L = milligrams per liter TSS = total suspended solids conc. = concentration		c = compliant max. = maximum

Compliance History

Customer/Respondent/Owner-Operator:	CN600125157 TXI Operations, LP	Classification: AVERAGE	Rating: 1.92
Regulated Entity:	RN100670983 TEXAS INDUSTRIES SPANGLER SHOP	Classification: AVERAGE	Site Rating: 0.35
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	44740
	WASTE WATER GENERAL PERMIT	PERMIT	TXG110184
Location:	10610 SPANGLER RD, DALLAS CO, TX	Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	May 08, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 08, 2003 to May 08, 2008		

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

Name: Lauren Smitherman Phone: 512-329-5223

Site Compliance History Components

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

Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- | | | |
|----|------------|----------|
| 1 | 07/21/2003 | (331255) |
| 2 | 07/21/2003 | (331257) |
| 3 | 07/21/2003 | (331260) |
| 4 | 10/17/2003 | (331262) |
| 5 | 10/17/2003 | (331264) |
| 6 | 10/17/2003 | (331266) |
| 7 | 01/21/2004 | (331268) |
| 8 | 01/21/2004 | (331270) |
| 9 | 01/21/2004 | (331272) |
| 10 | 04/12/2004 | (331248) |
| 11 | 04/22/2004 | (331251) |
| 12 | 04/22/2004 | (331253) |
| 13 | 04/26/2004 | (331249) |
| 14 | 07/20/2004 | (369326) |
| 15 | 07/20/2004 | (369327) |
| 16 | 07/20/2004 | (369328) |
| 17 | 10/22/2004 | (369329) |
| 18 | 10/22/2004 | (369330) |
| 19 | 10/22/2004 | (369331) |
| 20 | 01/20/2005 | (391508) |
| 21 | 01/20/2005 | (391509) |
| 22 | 01/20/2005 | (391510) |
| 23 | 03/21/2005 | (391507) |
| 24 | 04/22/2005 | (428969) |
| 25 | 04/22/2005 | (428970) |

26 07/21/2005 (428971)
 27 07/21/2005 (428972)
 28 07/21/2005 (428973)
 29 10/19/2005 (495093)
 30 10/19/2005 (495094)
 31 10/19/2005 (495095)
 32 01/19/2006 (495096)
 33 01/19/2006 (495097)
 34 01/19/2006 (495098)
 35 03/20/2006 (495092)
 36 04/17/2006 (507565)
 37 04/17/2006 (507566)
 38 07/24/2006 (529759)
 39 07/24/2006 (529760)
 40 07/24/2006 (529761)
 41 10/30/2006 (552707)
 42 10/30/2006 (552708)
 43 10/30/2006 (552709)
 44 01/29/2007 (552710)
 45 01/29/2007 (552711)
 46 01/29/2007 (552712)
 47 04/25/2007 (591000)
 48 04/25/2007 (591001)
 49 04/25/2007 (591002)
 50 05/23/2007 (591003)
 51 08/24/2007 (606471)
 52 08/24/2007 (606472)
 53 08/24/2007 (606473)
 54 09/19/2007 (606474)
 55 11/01/2007 (634886)
 56 11/13/2007 (634887)
 57 12/18/2007 (634888)
 58 01/23/2008 (634889)
 59 05/02/2008 (640285)

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

Date	09/30/2003	(331266)		
Self Report?	YES		Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date	11/30/2003	(331270)		
Self Report?	YES		Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date	01/31/2004	(331249)		
Self Report?	YES		Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date	08/31/2004	(369330)		
Self Report?	YES		Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date	01/31/2005	(428969)		
Self Report?	YES		Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date	07/31/2005	(495093)		
Self Report?	YES		Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			

Description:	Failure to meet the limit for one or more permit parameter		
Date	02/28/2006	(495092)	
Self Report?	YES		Classification Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	04/30/2006	(529759)	
Self Report?	YES		Classification Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	05/31/2007	(606471)	
Self Report?	YES		Classification Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	06/30/2007	(606472)	
Self Report?	YES		Classification Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	07/31/2007	(606473)	
Self Report?	YES		Classification Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	09/30/2007	(634886)	
Self Report?	YES		Classification Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	12/31/2007	(634889)	
Self Report?	YES		Classification Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

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
TXI OPERATIONS, LP
RN100670983

§
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§
§
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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0774-IWD-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 TXI Operations, LP ("the Respondent") under the authority of 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 concrete batch plant located at 10610 Spangler Road, Dallas County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 May 7, 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 Four Thousand Nine Hundred Fifty Dollars (\$4,950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Nine Hundred Sixty Dollars (\$3,960)

of the administrative penalty and Nine Hundred Ninety Dollars (\$990) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and 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 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.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110184, Permit Requirements Part III Section A, as documented during a record review conducted on March 26, 2008 and shown in the following violation table:

EFFLUENT VIOLATION TABLE		
	TSS Daily Max. Conc.	Oil and Grease Daily Max. Conc.
Months	Limit = 65 mg/L	Limit = 15 mg/L
5/31/2007	c	20
6/30/2007	73	c
7/31/2007	95	c
9/30/2007	c	37
12/31/2007	120	c
mg/L = milligrams per liter TSS = total suspended solids conc. = concentration		c = compliant max. = maximum

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: TXI Operations, LP, Docket No. 2008-0774-IWD-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, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES General Permit No. TXG110184, Permit Requirements Part III Section A, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. 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 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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 Facility 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.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Zedler
For the Executive Director

8/29/2008
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.

James B. Rogers
Signature

8/27/2008
Date

James B. Rogers
Name (Printed or typed)
Authorized Representative of
TXI Operations, LP

VP-Consumer Products
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.

