EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0400-EAQ-E **TCEQ ID:** RN104945217 **CASE NO.:** 35518

RESPONDENT NAME: Robert Rotter

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	X EDWARDS AQUIFER

SITE WHERE VIOLATION(S) OCCURRED: Rotter Property, 12225 Highway 290 West, Hays County

TYPE OF OPERATION: Commercial parking area

SMALL BUSINESS: __X__ **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received November 5, 2007, alleging that fill was being placed and construction activity was underway in the Edwards Aquifer contributing zone. No erosion and sedimentation controls were installed at the Site. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on October 6, 2008. No comments were received.

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. Robert Rotter, Owner, 13230 Madrone Mountain Way, Austin, Texas 78737

Respondent's Attorney: Mr. Andrew Barrett, 505 West 14th Street, Austin, Texas 78701

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: X Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** November 5, 2007 **Date of Investigation Relating to this Case:** November 19, 2007 **Date of NOV/NOE Relating to this Case:** February 26, 2008 (NOE) **Background Facts:** This was a complaint investigation. **WATER** Failure to obtain approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the investigator observed a compacted road base event parking lot, as well as a roadway from the event parking lot to a storage lot on a combined area of 11.75 acres [30 TEX. ADMIN. CODE § 213.23(a)(1)].	**Total Assessed:** $13,260 **Total Deferred:** $2,652 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $10,608 **Site Compliance History Classification** __ **High** X **Average** __ **Poor** **Person Compliance History Classification** __ **High** X **Average** __ **Poor** **Major Source:** X Yes __ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent is no longer developing the Site and has no immediate plans for further development. If the Respondent develops the Site in the future, an administratively complete application for a CZP and associated application fee will be submitted to the TCEQ, in accordance with 30 TEX. ADMIN CODE § 213.23(a)(1).

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision January 29, 2008*

TCEQ

DATES					
Assigned	3-Mar-2008				
PCW	10-Mar-2008	Screening	10-Mar-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Robert Rotter		
Reg. Ent. Ref. No.	RN104945217		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	35518	No. of Violations	1
Docket No.	2008-0400-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	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* — **$13,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 2% Enhancement — *Subtotals 2, 3, & 7* — **$260**

Notes: An enhancement is recommended due to one unrelated written NOV.

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	$119
Approx. Cost of Compliance	$4,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* — **$13,260**

OTHER FACTORS AS JUSTICE MAY REQUIRE — 0% — *Adjustment* — **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount — **$13,260**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* — **$13,260**

DEFERRAL — 20% Reduction — *Adjustment* — **-$2,652**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY — **$10,608**

Screening Date 10-Mar-2008 **Docket No.** 2008-0400-EAQ-E **PCW**

Respondent Robert Rotter *Policy Revision 2 (September 2002)*

Case ID No. 35518 *PCW Revision January 29, 2008*

Reg. Ent. Reference No. RN104945217

Media [Statute] Edwards Aquifer

Enf. Coordinator Lauren Smitherman

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	1	2%
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) 2%

>> 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

An enhancement is recommended due to one unrelated written NOV.

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

Screening Date 10-Mar-2008 **Docket No.** 2008-0400-EAQ-E **PCW**

Respondent Robert Rotter *Policy Revision 2 (September 2002)*

Case ID No. 35518 *PCW Revision January 29, 2008*

Reg. Ent. Reference No. RN104945217

Media [Statute] Edwards Aquifer

Enf. Coordinator Lauren Smitherman

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.23(a)(1)

Violation Description Failed to obtain approval of an Edwards Aquifer Contributing Zone Plan prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone, as documented during an investigation conducted on November 19, 2007. Specifically, the investigator observed a compacted road base event parking lot, as well as a roadway from the event parking lot to a storage lot on a combined area of 11.75 acres.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 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.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 13 | 13 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $13,000

Thirteen single events are recommended based on the investigation completion date (February 26, 2008) through the screening date (March 10, 2008).

Economic Benefit (EB) for this violation

Estimated EB Amount $119

Statutory Limit Test

Violation Final Penalty Total $13,260

This violation Final Assessed Penalty (adjusted for limits) $13,260

Economic Benefit Worksheet

Respondent Robert Rotter
Case ID No. 35518
Reg. Ent. Reference No. RN104945217
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$4,000	26-Feb-2008	1-Jul-2008	0.6	$119	n/a	$119
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Cost reflects amount to ensure that an administratively complete Contributing Zone Plan is submitted to the TCEQ should the Site undergo further development. The date required is the investigation completion date and the final date is the date that development ceased at the Site.						
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 $4,000

TOTAL $119

Compliance History

Customer/Respondent/Owner-Operator:	CN603026683	ROTTER, ROBERT	Classification: AVERAGE Rating: 3.00
Regulated Entity:	RN104945217	ROTTER PROPERTY	Classification: AVERAGE Site Rating: 3.00
ID Number(s):			
Location:	12225 HWY 290 W HAYS CO. TX		Rating Date: September 01 07 Repeat Violator: NO
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	March 07, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 07, 2003 to March 07, 2008		

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

Name: Lauren Smitherman Phone: 512-239-5223

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.)

N/A

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

Date: 05/16/2006 (464553)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201

Description: Failure to comply with State of Texas outdoor burning regulations.

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

K. Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
ROBERT ROTTER	§	
RN104945217	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0400-EAQ-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 Robert Rotter ("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, represented by the law firm of Andrew Barrett, appear before the Commission and together stipulate that:

1. The Respondent owns a commercial parking area at 12225 Highway 290 West in Hays 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.

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 March 2, 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 Thirteen Thousand Two Hundred Sixty Dollars ($13,260) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Ten Thousand Six Hundred Eight Dollars ($10,608) of the administrative penalty and Two Thousand Six Hundred Fifty-Two Dollars ($2,652) 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 recognizes that the Respondent is no longer developing the Site and has no immediate plans for further development. If the Respondent develops the Site in the future, an administratively complete application for an Edwards Aquifer Contributing Zone Plan ("CZP") and associated application fee will be submitted to the TCEQ in accordance with 30 TEX. ADMIN CODE § 213.23(a)(1).

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 of the Site, the Respondent is alleged to have failed to obtain approval of a CZP prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the investigator observed a compacted road base event parking lot, as well as a roadway from the event parking lot to a storage lot on a combined area of 11.75 acres, in violation of 30 TEX. ADMIN. CODE § 213.23(a)(1), as documented during an investigation conducted on November 19, 2007.

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: Robert Rotter, Docket No. 2008-0400-EAQ-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. 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.

3. 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.

4. 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.

5. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 9/17/2008
For the Executive Director Date

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

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

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

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

_____ 7-24/08
Signature Date

Robert Rotter Owner
Name (Printed or typed) Title
Authorized Representative of
Robert Rotter

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.