EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0924-IWD-E **TCEQ ID:** RN102924529 **CASE NO.:** 2757

RESPONDENT NAME: Southwest Nut Company

ORDER TYPE:		
__1660 AGREED ORDER	X 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
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Southwest Nut Company, 825 West Main Street, Fabens, El Paso County

TYPE OF OPERATION: Nut and nut products manufacturing

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. 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 November 5, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Chris Spence, President, Southwest Nut Company, P.O. Box 3900, Fabens, Texas 79838
Respondent's Attorney: Mr. Tom Carey, Bell, Boyd, and Lloyd, LLP, Three First National Plaza, Suite 3200, Chicago, Il. 60602

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** April 23, 2007 **Date of NOV/NOE Relating to this Case:** May 31, 2007 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **WATER** Failed to prevent the unauthorized discharge of industrial wastewater [TEX. WATER CODE § 26.121(a)(1) and Agreed Order Docket Number 2003-0365-IWD-E, Ordering Provisions 2.a through 2.c.].	**Total Assessed:** $18,300 **Total Deferred:** $0 __Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $820 (remaining $17,480 due in 23 monthly payments of $760 each) **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002 **Findings Orders Justification:** Failure to comply with a previous Agreed Order.	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order, cease the unauthorized discharge of process wastewater; b. Within 15 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.; c. Within 30 days after the effective date of this Agreed Order: i. Tie into the publicly owned treatment works system owned by El Paso County Water Control and Improvement District No. 4; or ii. Contract with a registered sludge transporter to dispose of the wastewater; or iii. Submit an administratively complete permit application to obtain authorization for the discharge of industrial reclaimed water, or for the discharge of industrial wastewater. d. Within 45 days after the effective date of this Agreed Order, submit written certification with Ordering Provision c; e. If an application for a wastewater discharge permit is submitted, respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and f. If an application for a wastewater discharge permit is submitted, within 180 days after the effective date of this Agreed Order if applicable, submit written certification that a wastewater permit has been obtained.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision May 25, 2007*

TCEQ

DATES					
Assigned	4-Jun-2007				
PCW	14-Jun-2007	Screening	13-Jun-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Southwest Nut Company		
Reg. Ent. Ref. No.	RN102924529		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	2757	No. of Violations	1
Docket No.	2007-0924-IWD-E	Order Type	Findings
Media Program(s)	Water Quality	Enf. Coordinator	J. Craig Fleming
Multi-Media		EC's Team	EnforcementTeam 3
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $15,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 22% Enhancement — *Subtotals 2, 3, & 7* $3,300

Notes: A 22% enhancement is recommended for having one NOV with non-similar violations, and one agreed final enforcement order containing a denial.

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

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,033
Approx. Cost of Compliance	$5,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $18,300

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 $18,300

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $18,300

DEFERRAL — 0% Reduction — *Adjustment* $0

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY $18,300

Screening Date 13-Jun-2007 **Docket No.** 2007-0924-IWD-E **PCW**

Respondent Southwest Nut Company *Policy Revision 2 (September 2002)*

Case ID No. 2757 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN102924529

Media [Statute] Water Quality

Enf. Coordinator J. Craig Fleming

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*)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		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) 22%

>> 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

A 22% enhancement is recommended for having one NOV with non-similar violations, and one agreed final enforcement order containing a denial.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 13-Jun-2007 **Docket No.** 2007-0924-IWD-E **PCW**

Respondent Southwest Nut Company *Policy Revision 2 (September 2002)*

Case ID No. 2757 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN102924529

Media [Statute] Water Quality

Enf. Coordinator J. Craig Fleming

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1) and Agreed Order 2003-0365-IWD-E, Ordering Provisions 2.a - 2.c

Violation Description Failed to prevent the unauthorized discharge of industrial wastewater. Specifically, process wastewater from nut roasting and packaging discharged through two grease traps into a concrete lined ditch, then into a field for irrigation purposes. In addition, the respondent failed to tie into the publicly owned treatment works system owned by El Paso County Water Control and Improvement District No. 4 or submit documentation certifying that it had ceased the unauthorized discharge of process wastewater, as required by Agreed Order Docket No. 2003-0365-IWD-E.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 15 | 1320 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $15,000

Fifteen quarterly events are recommended from the effective date of the Agreed Order Docket No. 2003-0365-IWD-E effective on November 2, 2003 to the screening date of June 14, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,033

Statutory Limit Test

Violation Final Penalty Total $18,300

This violation Final Assessed Penalty (adjusted for limits) $18,300

Economic Benefit Worksheet

Respondent Southwest Nut Company
Case ID No. 2757
Reg. Ent. Reference No. RN102924529
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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				0.0	$0	n/a	$0
Other (as needed)	$5,000	15-Nov-2003	1-Jan-2008	4.1	$1,033	n/a	$1,033

Notes for DELAYED costs: Estimated cost of equipment, engineering plans and associated expenses for tying into the publicly owned treatment works system. The Date Required was the estimated date of tying into the WWTF lines from the previous agreed order. 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				0.0	$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: NA

Approx. Cost of Compliance: $5,000

TOTAL: $1,033

Compliance History

Customer/Respondent/Owner-Operator:	CN601483589	Southwest Nut Company	Classification: AVERAGE	Rating: 6.30
Regulated Entity:	RN102924529	SOUTHWEST NUT COMPANY	Classification: AVERAGE	Site Rating: 9.60
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION		EPA ID	TXR000051243
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION		ID NUMBER	F1529
Location:	825 W MAIN ST, FABENS, TX, 79838		Rating Date: September 01 06 Repeat Violator: NO	
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	June 11, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 11, 2002 to June 11, 2007			

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

Name: J. Craig Fleming Phone: (512) 239-5806

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.

Effective Date: 11/02/2003 ADMINORDER 2003-0365-IWD-E
Classification: Moderate

Citation: 2C TWC Chapter 20, SubChapter A 26.121(a)(1)
Description: Failure to prevent discharge into waters of the State.

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 10/15/2002 (IE0018789001001)
2 11/26/2002 (15541)
3 01/22/2003 (22454)
4 03/04/2005 (373064)
5 05/31/2007 (557864)

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

Date: 11/25/2002 (15541)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter C 335.62
Description: Failure to perform a hazardous waste determination for each solid waste generated at the facility.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
SOUTHWEST NUT COMPANY	§	
RN102924529	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0924-IWD-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Southwest Nut Company ("Southwest") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Southwest, represented by Tom Carey of the law firm of Bell, Boyd, and Lloyd, LLP, presented this agreement to the Commission.

Southwest understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Southwest agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Southwest.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Southwest owns and operates a nut and nut products manufacturing facility at 825 West Main Street in Fabens, El Paso County, Texas (the "Facility").

2. Southwest has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. During an investigation on April 23, 2007, TCEQ staff documented that Southwest failed to prevent the unauthorized discharges of industrial wastewater. Specifically, process wastewater from nut roasting and packaging discharged through two grease traps into a concrete lined ditch, then into a field for irrigation purposes. In addition, Southwest failed to tie into the publicly owned treatment works system owned by El Paso County Water Control and Improvement District No. 4 or submit documentation certifying that it had ceased the unauthorized discharge of process wastewater, as required by Agreed Order Docket No. 2003-0365-IWD-E.

4. Southwest received notice of the violations on June 5, 2007.

II. CONCLUSIONS OF LAW

1. Southwest is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Findings of Fact No. 3, Southwest failed to prevent the unauthorized discharge of industrial wastewater, in violation of TEX. WATER CODE § 26.121(a)(1) and Agreed Order Docket Number 2003-0365-IWD-E, Ordering Provisions 2.a through 2.c.

3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Southwest for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of Eighteen Thousand Three Hundred Dollars ($18,300) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Southwest has paid Eight Hundred Twenty Dollars ($820) of the administrative penalty. The remaining amount of Seventeen Thousand Four Hundred Eighty Dollars ($17,480) of the administrative penalty shall be payable in 23 monthly payments of Seven Hundred Sixty Dollars ($760) 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 Southwest fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Southwest to meet the payment schedule of this Agreed Order constitutes the failure by Southwest to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Southwest is assessed an administrative penalty in the amount of Eighteen Thousand Three Hundred Dollars ($18,300) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Southwest's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Southwest Nut Company, Docket No. 2007-0924-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. Southwest shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order, cease the unauthorized discharge of process wastewater;

   b. Within 15 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.;

   c. Within 30 days after the effective date of this Agreed Order:

      i. Tie into the publicly owned treatment works system owned by El Paso County Water Control and Improvement District No. 4, or

      ii. Contract with a registered sludge transporter to dispose of the wastewater; or

      iii. Submit an administratively complete permit application to obtain authorization for the discharge of industrial reclaimed water, in accordance with 30 TEX. ADMIN. CODE ch. 210, or for the discharge of industrial wastewater, in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Water Quality Applications Team, Permits
Administrative Review Section
Registration, Review and Reporting Division, MC-161
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

d. Within 45 days after the effective date of this Agreed Order, submit written certification with Ordering Provision 2.c;

e. If an application for a wastewater discharge permit is submitted, respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and

f. If an application for a wastewater discharge permit is submitted, within 180 days after the effective date of this Agreed Order if applicable, submit written certification that a wastewater permit has been obtained. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 169A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 E. Franklin Avenue, Suite 560
El Paso, Texas 79901-1212

3. The provisions of this Agreed Order shall apply to and be binding upon Southwest. Southwest 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 Southwest 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, Southwest's failure to comply is not a violation of this Agreed Order. Southwest shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Southwest shall notify the Executive Director within seven days after Southwest 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 Southwest shall be made in writing to the Executive Director. Extensions are not effective until Southwest receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Southwest if the Executive Director determines that Southwest has not complied with one or more of the terms or conditions in this Agreed Order.

7. This Agreed Order shall terminate five years from its effective date or upon compliance with all he terms and conditions set forth in this Agreed Order, whichever is later.

8. This Agreed Order, issued by the Commission, shall not be admissible against Southwest 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.

9. 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.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

Date 1/11/08

I, the undersigned, have read and understand the attached Agreed Order in the matter of Southwest Nut Company. I am authorized to agree to the attached Agreed Order on behalf of Southwest Nut Company, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Southwest Nut Company waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

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

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

Signature

Date 8-28-7

CHRIS SPENCE

Name (Printed or typed)
Authorized Representative of
Southwest Nut Company

President

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.