

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1310-WQ-E **TCEQ ID:** RN105119390 **CASE NO.:** 34425

RESPONDENT NAME: F&K Face, L.P.

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: F&K Face, LP, 4733 American Legion Road, Tyler, Smith County</p> <p>TYPE OF OPERATION: Construction site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input 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 January 22, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, (512) 239-2576, MC 149; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Randall Hanson, President, F&K Face, L.P., 1989 Hollystone, Tyler, Texas 75703 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 12 and March 23, 2007</p> <p>Date of NOV/NOE Relating to this Case: August 10, 2007 (NOE)</p> <p>Background Facts: These were routine investigations. Two violations were documented.</p> <p>WATER</p> <p>1) Failure to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state. Specifically, silt fences were not properly placed and maintained to control storm water runoff which discharged to an unnamed creek. Sample analysis of stormwater discharged to the creek showed total suspended solids ("TSS") concentrations as high as 4,480 mg/l whereas a stormwater sample collected upgradient from the construction site contained only 43 mg/l of TSS [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III, Section F.2(a) and F.7, and TEX. WATER CODE § 26.121(a)].</p> <p>2) Failure to document incidents of non-compliance in the storm water inspection report retained as part of the Storm Water Pollution Prevention Plan. Specifically, a report completed on March 16, 2007 did not indicate the locations of sediment discharges or silt fences that failed to operate as designed [30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III, Section F.8(d)].</p>	<p>Total Assessed: \$5,202</p> <p>Total Deferred: \$1,040 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$137 (remaining \$4,025 due in 35 monthly payments of \$115 each).</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input 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:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges of sediment from the Site;</p> <p>b. Within 30 days after the effective date of this Agreed Order, ensure:</p> <p>i. Erosion and sediment controls are adequately designed to retain sediments on-site to the extent practicable;</p> <p>ii. Stabilization measures are established on portions of the Site where construction has temporarily and/or permanently ceased; and</p> <p>iii. The storm water inspection report includes all instances of non-compliance including all discharges of sediment from the Site;</p> <p>c. Within 45 days after the effective date of this Agreed Order, remove and properly dispose of sediment that has discharged from the Site; and</p> <p>d. Within 60 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 Provisions a. through c.</p>

Additional ID No(s): TPDES Permit No. 150000



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision June 26, 2007

DATES	Assigned	13-Aug-2007	Screening	14-Aug-2007	EPA Due	
	PCW	27-Sep-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	F&K Face, L.P.
Reg. Ent. Ref. No.	RN105119390
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34425	No. of Violations	2
Docket No.	2007-1310-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Thomas Jecha
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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes

Culpability Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Reduction Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

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

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 14-Aug-2007

Docket No. 2007-1310-WQ-E

PCW

Respondent F&K Face, L.P.

Policy Revision 2 (September 2002)

Case ID No. 34425

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105119390

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with dissimilar violations at this site within the past five years.

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

Screening Date 14-Aug-2007	Docket No. 2007-1310-WQ-E	PCW
Respondent F&K Face, L.P.	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 34425	<small>PCW Revision June 26, 2007</small>	
Reg. Ent. Reference No. RN105119390		
Media [Statute] Water Quality		
Enf. Coordinator Thomas Jecha		
Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III, Section F.2(a) and F.7, and Tex. Water Code § 26.121(a)	
Violation Description	Failed to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state. Specifically, silt fences were not properly placed and maintained to control storm water runoff which discharged to an unnamed creek. Sample analysis of stormwater discharged to the creek showed total suspended solids ("TSS") concentrations as high as 4,480 mg/l whereas a stormwater sample collected upgradient from the construction site contained only 43 mg/l of TSS.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

		Major	Moderate	Minor	
	Falsification				Percent 0%
Matrix Notes	Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.				

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty \$5,000

Two quarterly events are recommended from the March 12, 2007 investigation date until the August 14, 2007 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$182"/>	Violation Final Penalty Total <input type="text" value="\$5,100"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,100"/>	

Economic Benefit Worksheet

Respondent **F&K Face, L.P.**
 Case ID No. **34425**
 Reg. Ent. Reference No. **RN105119390**
 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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$3,000	12-Mar-2007	27-May-2008	1.2	\$182	n/a	\$182

Notes for DELAYED costs

Estimated cost to design and implement adequate erosion control measures and remove sediment discharged to the road side drainage ditch immediately down gradient of the construction site. The date required is the investigation date and 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

Approx. Cost of Compliance

\$3,000

TOTAL

\$182

Screening Date	14-Aug-2007	Docket No.	2007-1310-WQ-E	PCW
Respondent	F&K Face, L.P.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	34425	<i>PCW Revision June 26, 2007</i>		
Reg. Ent. Reference No.	RN105119390			
Media [Statute]	Water Quality			
Enf. Coordinator	Thomas Jecha			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III, Section F.8(d)			
Violation Description	Failed to document incidents of non-compliance in the storm water inspection report retained as part of the Storm Water Pollution Prevention Plan. Specifically, a report completed on March 16, 2007 did not indicate the locations of sediment discharges or silt fences that failed to operate as designed.			
Base Penalty				\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	<input type="text" value="1%"/>

Matrix Notes: More than 70% of the rule requirement was met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One single event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$5"/>	Violation Final Penalty Total <input type="text" value="\$102"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$102"/>	

Economic Benefit Worksheet

Respondent F&K Face, L.P.
Case ID No. 34425
Reg. Ent. Reference No. RN105119390
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
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	16-Mar-2007	27-Mar-2008	1.0	\$5	n/a	\$5

Notes for DELAYED costs Estimated cost to document non-compliances at the site. The date required is the date of the respondent's report and 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

Approx. Cost of Compliance	\$100	TOTAL	\$5
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Compliance History

Customer/Respondent/Owner-Operator: CN603127564 F&K Face, L.P. Classification: Rating:
Regulated Entity: RN105119390 F&K FACE LP Classification: Site Rating:

ID Number(s):

Location: 4733 AMERICAN LEGION ROAD, TYLER, TX, 75703

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared August 13, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 13, 2002 to August 13, 2007

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

Name: Thomas Jecha Phone: 512-239-2576

Site Compliance History Components

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

Components (Multimedia) for the Site :

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

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 08/10/2007 (558767)

N/A

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

Date: 11/22/2006 (540877)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Description: Failure to post construction site notice.

- 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

Mathematical Analysis

Chapter 1: Introduction to Real Analysis

1.1 The Real Number System

1.2 The Axioms of the Real Numbers

1.3 The Completeness Axiom

1.4 The Archimedean Property

1.5 The Least Upper Bound Property

1.6 The Rational Numbers

1.7 The Irrational Numbers

1.8 The Real Numbers as a Complete Metric Space

1.9 The Cauchy Criterion

1.10 The Nested Interval Property

1.11 The Bolzano-Weierstrass Theorem

1.12 The Heine-Borel Theorem

1.13 The Intermediate Value Theorem

1.14 The Extreme Value Theorem

1.15 The Weierstrass Approximation Theorem

1.16 The Stone-Weierstrass Theorem

1.17 The Uniform Continuity Theorem

1.18 The Riemann-Stieltjes Integral

1.19 The Riemann Integral

1.20 The Lebesgue Measure

1.21 The Lebesgue-Stieltjes Integral

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
F&K FACE, L.P.
RN105119390**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-1310-WQ-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 F&K Face, L.P. ("F&K Face") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and F&K Face appear before the Commission and together stipulate that:

1. F&K Face owns and operates a construction site at 4733 American Legion Road in Tyler, Smith County, Texas (the "Site").
2. F&K Face 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 F&K Face agree that the Commission has jurisdiction to enter this Agreed Order, and that F&K Face is subject to the Commission's jurisdiction.
4. F&K Face received notice of the violations alleged in Section II ("Allegations") on or about August 15, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by F&K Face of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand Two Hundred Two Dollars (\$5,202) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

F&K Face has paid One Hundred Thirty-Seven Dollars (\$137) of the administrative penalty and One Thousand Forty Dollars (\$1,040) is deferred contingent upon F&K Face'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 F&K Face fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require F&K Face to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Twenty-Five Dollars (\$4,025) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Fifteen Dollars (\$115) 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 F&K Face 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 F&K Face to meet the payment schedule of this Agreed Order constitutes the failure by F&K Face to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and F&K Face 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 F&K Face 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 Site, F&K Face is alleged to have:

1. Failed to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000, Part III, Section F.2(a) and F.7, and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on March 12, 2007. Specifically, silt fences were not properly placed and maintained to control storm water runoff which discharged to an unnamed creek. Sample analysis of stormwater discharged to the creek showed total suspended solids ("TSS")

concentrations as high as 4,480 mg/l whereas a stormwater sample collected upgradient from the construction site contained only 43 mg/l of TSS.

2. Failed to document incidents of non-compliance in the storm water inspection report retained as part of the Storm Water Pollution Prevention Plan, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), TPDES General Permit No. TXR150000, Part III., Section F.8(d), as documented during an investigation conducted on March 23, 2007. Specifically, a report completed on March 16, 2007 did not indicate the locations of sediment discharges or silt fences that failed to operate as designed.

III. DENIALS

F&K Face generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that F&K Face pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and F&K Face'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: F&K Face, L.P., Docket No. 2007-1310-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. It is further ordered that F&K Face shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges of sediment from the Site;
 - b. Within 30 days after the effective date of this Agreed Order, ensure:
 - i. Erosion and sediment controls are adequately designed to retain sediments on-site to the extent practicable;
 - ii. Stabilization measures are established on portions of the Site where construction has temporarily and/or permanently ceased; and
 - iii. The storm water inspection report includes all instances of non-compliance including all discharges of sediment from the Site;

- c. Within 45 days after the effective date of this Agreed Order, remove and properly dispose of sediment that has discharged from the Site; and
- d. Within 60 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 Nos. 2.a. through 2.c. 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 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

with a copy to:

Water Section, Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3756

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

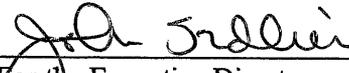
1911
No. 1000

Received of the
Hon. Secy. of the Navy
the sum of \$1000.00
for the purchase of
the U.S.S. Albatross
No. 4000
This receipt is valid
only when countersigned
by the Hon. Secy. of the Navy
and the Hon. Secy. of the Treasury
Department

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

12/28/2007
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.



Signature

11-07-2007
Date

KENNETH B. HANAN

Name (Printed or typed)
Authorized Representative of
F&K Face, L.P.

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.

