EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1371-EAQ-E **TCEQ ID:** RN104543780 **CASE NO.:** 34515

RESPONDENT NAME: Austin Equipment Company, LC dba Superior Crushed Stone

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: Austin Equipment Site, 501 County Road 344, Williamson County

TYPE OF OPERATION: Stone quarry

SMALL BUSINESS: ____ Yes __X__ No

OTHER SIGNIFICANT MATTERS: A complaint was received on June 5, 2007, concerning large amounts of sediment from Austin Equipment which were being discharged into Salado Creek. 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 January 28, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Mr. Andrew Hunt, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1203; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. John Schuler, Manager, Austin Equipment Company, LC, 1405 East Riverside Drive, Austin, Texas 78741
Respondent's Attorney: Not represented by counsel on this enforcement matter

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:** June 5, 2007 **Date of Investigation Relating to this Case:** June 15, 2007 **Date of NOV/NOE Relating to this Case:** August 15, 2007 (NOE) **Background Facts:** This was a complaint investigation. Two violations were documented. **WATER** 1) Failed to maintain a complete copy of the Edwards Aquifer Water Pollution Abatement Plan ("WPAP") on site. Specifically, the construction drawings for the extended detention (water quality) pond were missing [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer Protection Program ("EAPP") ID No. 50222.01, Standard Conditions No. 3]. 2) Failed to submit and receive approval of modifications to an Edwards Aquifer WPAP prior to performing a regulated activity [30 TEX. ADMIN. CODE § 213.4(j)(2)].	**Total Assessed:** $3,410 **Total Deferred:** $682 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $1,364 **Total Paid to General Revenue:** $1,364 **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	**Ordering Provisions:** 1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A) 2) The Order will also require the Respondent to: a. Immediately upon the effective date of this Agreed Order, begin maintaining a complete copy of the Edwards Aquifer WPAP on site; b. Within 30 days after the effective date of this Agreed Order, submit for review and approval an EAPP modification application for the second entrance from County Road 344, the Superior Stone office building, the south stream crossing that is used to access the quarry pit, the haul road between the quarry pit and the rock crusher, the actual location of the rock crusher, and the drainage area of the material stockpile and plant area. It must include a revised estimate of the amount of impervious cover as well; c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the modification application within 30 days after the date of such requests or by any other deadline specified in writing; and d. Within 45 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 Nos. 2.a. and 2.b.

Additional ID No(s).: 11-05022201 and 11-05022201A

Attachment A
Docket Number: 2007-1371-EAQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Austin Equipment Company, LC dba Superior Crushed Stone**
Payable Penalty Amount:	**Two Thousand Seven Hundred Twenty-Eight Dollars ($2,728)**
SEP Amount:	**One Thousand Three Hundred Sixty-Four Dollars ($1,364)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Keep Texas Beautiful**
Location of SEP:	**Williamson County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of waste which will help prevent human health concerns associated with illegally dumped waste.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Katie Sternberg, Program Manager
Keep Texas Beautiful
P.O. Box 2251
Austin, Texas 78768

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 17, 2006*

TCEQ

DATES						
Assigned	13-Aug-2007					
PCW	25-Aug-2007	Screening	24-Aug-2007	EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	Austin Equipment Company, LC dba Superior Crushed Stone		
Reg. Ent. Ref. No.	RN104543780		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34515	No. of Violations	2
Docket No.	2007-1371-EAQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Deana Holland
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $3,100

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 10% Enhancement — *Subtotals 2, 3, & 7*: $310

Notes: A 10% enhancement is recommended due to two NOVs with same or similar violations within the last five years.

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	$42
Approx. Cost of Compliance	$1,050

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $3,410

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: $3,410

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $3,410

DEFERRAL — 20% Reduction — *Adjustment*: -$682

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: $2,728

Screening Date 24-Aug-2007 **Docket No.** 2007-1371-EAQ-E **PCW**

Respondent Austin Equipment Company, LC dba Superior Crushed S

Case ID No. 34515

Reg. Ent. Reference No. RN104543780

Media [Statute] Water Quality

Enf. Coordinator Deana Holland

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

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*)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> 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 10% enhancement is recommended due to two NOVs with same or similar violations within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 24-Aug-2007 **Docket No.** 2007-1371-EAQ-E **PCW**

Respondent Austin Equipment Company, LC dba Superior Crushed Stone *Policy Revision 2 (September 2002)*

Case ID No. 34515 *PCW Revision November 17, 2006*

Reg. Ent. Reference No. RN104543780

Media [Statute] Water Quality

Enf. Coordinator Deana Holland

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Protection Program ID No. 50222.01, Standard Conditions No. 3

Violation Description Failed to maintain a complete copy of the Edwards Aquifer Water Pollution Abatement Plan (WPAP) on-site, as documented during an investigation conducted on June 15, 2007. Specifically, the construction drawings for the extended detention (water quality) pond were missing.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

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

Adjustment $9,900

$100

Violation Events

Number of Violation Events 1 — 70 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended based on the June 15, 2007 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $110

This violation Final Assessed Penalty (adjusted for limits) $110

Economic Benefit Worksheet

Respondent Austin Equipment Company, LC dba Superior Crushed Stone
Case ID No. 34515
Reg. Ent. Reference No. RN104543780
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)	$50	15-Jun-2007	1-Apr-2008	0.8	$2	n/a	$2
Notes for DELAYED costs	Estimated cost to maintain a copy of the WPAP on site. The date required is the date of the investigation and the final date is the projected date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $50

TOTAL $2

Screening Date 24-Aug-2007 **Docket No.** 2007-1371-EAQ-E **PCW**

Respondent Austin Equipment Company, LC dba Superior Crushed Stone *Policy Revision 2 (September 2002)*

Case ID No. 34515 *PCW Revision November 17, 2006*

Reg. Ent. Reference No. RN104543780

Media [Statute] Water Quality

Enf. Coordinator Deana Holland

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 213.4(j)(2)

Violation Description Failed to submit and receive approval of modifications to an Edwards Aquifer WPAP prior to performing a regulated activity. Specifically, the approved Edwards Aquifer WPAP does not include the second entrance from County Road 344, the Superior Stone office building, the south stream crossing that is used to access the quarry pit, the haul road between the quarry pit and the rock crusher, the actual location of the rock crusher, and the drainage area of the material stockpile and plant area. In addition, the WPAP does not include a revised estimate of the amount of impervious cover as well.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 3 — 70 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three monthly events are recommended based on the investigation date (June 15, 2007) through the screening date (August 24, 2007).

Economic Benefit (EB) for this violation

Estimated EB Amount $40

Statutory Limit Test

Violation Final Penalty Total $3,300

This violation Final Assessed Penalty (adjusted for limits) $3,300

Economic Benefit Worksheet

Respondent Austin Equipment Company, LC dba Superior Crushed Stone
Case ID No. 34515
Reg. Ent. Reference No. RN104543780
Media Water Quality
Violation No. 2

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				0.0	$0	n/a	$0
Other (as needed)	$1,000	15-Jun-2007	1-Apr-2008	0.8	$40	n/a	$40
Notes for DELAYED costs	Estimated cost associated with preparing, submitting, and obtaining approval to modify an Edwards Aquifer WPAP. The date required is the date of the investigation and the final date is the projected date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $1,000 **TOTAL** $40

Compliance History

Customer/Respondent/Owner-Operator:	CN602523250	Austin Equipment Company, LC	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN104543780	AUSTIN EQUIPMENT SITE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	EDWARDS AQUIFER		REGISTRATION	11-05022201
	EDWARDS AQUIFER		REGISTRATION	11-05022201A
Location:	501 COUNTY ROAD 344, WILLIAMSON COUNTY, TX		Rating Date: 9/1/2006	Repeat Violator: NO

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: August 22, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 22, 2002 to August 22, 2007

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

Name: Deana Holland Phone: 239-2504

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 01/08/2007 (519135)

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

Date: 01/09/2007 (519135)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

Description: Failure to maintain a copy of the WPAP and AST on the site.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 327 327.5(a)[G]

Description: Failure to immediately abate and contain spills or discharges of petroleum products. A small oil spill, perhaps less than one gallon, was observed near the new rock crusher assembly work area.
Failure to immediately abate and contain spills or discharges of petroleum products.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

Description: Failure to maintain temporary sediment controls.

Self Report? NO Classification: Minor

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

Description: Failure to update the storm water pollution prevention plan (SWPPP) material inventory for paint, gear oil, etc.

Date: 04/13/2007 (543456)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

Description: Failure to maintain a copy of the WPAP and AST on the site.

Self Report? NO Classification: Minor

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

Description: Failure to update the storm water pollution prevention plan (SWPPP) material inventory for paint, gear oil, etc.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.5(f)(2)(A)

Description: Failure to notify the Austin Regional Office of a sensitive feature encountered during regulated activities.

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	§	
AUSTIN EQUIPMENT COMPANY, LC	§	**TEXAS COMMISSION ON**
DBA SUPERIOR CRUSHED	§	
STONE	§	
RN104543780	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1371-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 Austin Equipment Company, LC dba Superior Crushed Stone ("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 stone quarry operation at 501 County Road 344 in Williamson County, Texas (the "Site").

2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of 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 August 20, 2007.

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 Three Thousand Four Hundred Ten Dollars ($3,410) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Three Hundred Sixty-Four Dollars ($1,364) of the administrative penalty and Six Hundred Eighty-Two Dollars ($682) 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. One Thousand Three Hundred Sixty-Four Dollars ($1,364) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project.

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 Site, the Respondent is alleged to have:

1. Failed to maintain a complete copy of the Edwards Aquifer Water Pollution Abatement Plan ("WPAP") on site, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer Protection Program ("EAPP") ID No. 50222.01, Standard Conditions No. 3, as documented during an investigation conducted on June 15, 2007. Specifically, the construction drawings for the extended detention (water quality) pond were missing.

2. Failed to submit and receive approval of modifications to an Edwards Aquifer WPAP prior to performing a regulated activity, in violation of 30 TEX. ADMIN. CODE § 213.4(j)(2), as documented during an investigation conducted on June 15, 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: Austin Equipment Company, LC dba Superior Crushed Stone, Docket No. 2007-1371-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 Respondent shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, One Thousand Three Hundred Sixty-Four Dollars ($1,364) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order, begin maintaining a complete copy of the Edwards Aquifer WPAP onsite;

   b. Within 30 days after the effective date of this Agreed Order, submit for review and approval an EAPP modification application for the second entrance from County Road 344, the Superior Stone office building, the south stream crossing that is used to access the quarry pit, the haul road between the quarry pit and the rock crusher, the actual location of the rock crusher, and the drainage area of the material stockpile and plant area. It must include a revised estimate of the amount of impervious cover as well. The EAPP shall be submitted to:

      Water Section, Manager
      Austin Regional Office
      Texas Commission on Environmental Quality
      2800 South Interstate Highway 35, Suite 100
      Austin, Texas 78704-5712

c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the modification application within 30 days after the date of such requests or by any other deadline specified in writing; and

d. Within 45 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. 3.a. and 3.b. 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 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Austin Regional Office
Texas Commission on Environmental Quality
2800 South Interstate Highway 35, Suite 100
Austin, Texas 78704-5712

4. 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 operations referenced in this Agreed Order.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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

For the Executive Director

Date 1/11/08

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

Date 11/29/07

John W. Schuler
Name (Printed or typed)
Authorized Representative of
Austin Equipment Company, LC dba Superior Crushed Stone

Manager
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.

Attachment A
Docket Number: 2007-1371-EAQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Austin Equipment Company, LC dba Superior Crushed Stone**
Payable Penalty Amount:	**Two Thousand Seven Hundred Twenty-Eight Dollars ($2,728)**
SEP Amount:	**One Thousand Three Hundred Sixty-Four Dollars ($1,364)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Keep Texas Beautiful**
Location of SEP:	**Williamson County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of waste which will help prevent human health concerns associated with illegally dumped waste.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Katie Sternberg, Program Manager
Keep Texas Beautiful
P.O. Box 2251
Austin, Texas 78768

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.