

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.: 2004-1073-WQ-E TCEQ ID: RN104373931 CASE NO.: 17629**  
**RESPONDENT NAME: KC MATERIALS, INC.**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 24711 North Cranes Mill Road, Canyon Lake, Comal County</p> <p><b>TYPE OF OPERATION:</b> Surface mining operation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 17, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Justin Lannen, Litigation Division, MC R-4, (817) 588-5927  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Ms. Audra Ruble, Air Enforcement Section, MC R-14, (361) 825-3126  <b>TCEQ Regional Contact:</b> Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050  <b>Respondent:</b> Keith Weidner, Registered Agent and Director, KC Materials, Inc., 24711 North Cranes Mill Road, Canyon Lake, Texas 78133-1918  <b>Respondent's Attorney:</b> Mr. Erich Birch, Birch, Becker &amp; Moorman, L.L.P., 7000 North Mopac Expy, Austin, TX 78731</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b>                  June 15, 2004</p> <p><b>Date of NOE Relating to this Case:</b>                  July 16, 2004</p> <p><b>Background Facts:</b>                  The Litigation Division filed the EDPRP on March 2, 2005 and the Respondent filed its Answer on March 23, 2005. After extended settlement discussions, the Respondent signed and submitted an Agreed Order with a first payment of \$500.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>WQ</b></p> <p>Failed to obtain authorization to discharge storm water associated with industrial activity to waters in the state through an individual permit, the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System, or by qualifying for the Conditional No Exposure Certification for Exclusion under 40 C.F.R. § 122.26(g), as documented on June 15, 2004 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c)].</p>	<p><b>Initial Calculated Penalty:</b> \$26,860</p> <p><b>Total Assessed:</b> \$6,000 **</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid/Due to General Revenue:</b> \$500/\$5,500</p> <p>The Respondent has paid \$500 of the administrative penalty. The remaining amount of \$5,500 of the administrative penalty shall be payable in 11 monthly payments of \$500 each.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>**Explanation of Initial Calculated Penalty Reduction:</b> The penalty was reduced in consideration of litigation risk. This is one of the nine Clear Streams Initiative cases that were settled as a group.</p>	<p><b>Corrective Action Taken:</b></p> <p>The Executive Director recognizes that on June 17, 2004 the Respondent obtained authorization to discharge storm water associated with industrial activity under the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System.</p>



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

<b>DATES</b>	PCW	15-Dec-2004	Screening	20-Jul-2004	Priority Due	18-Oct-2004	EPA Due	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	KC Materials, Inc.
Reg. Ent. Ref. No.	RN104373931
Additional ID No(s)	TCEQ Stormwater Permit ID No. TXR05R513
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	17629	No. of Violations	1
Docket No.	2004-1073-WQ-E	Order Type	1660 without deferral
Case Priority	3	Enf. Coordinator	Kensley Greuter
Media Program(s)	Water Quality	EC's Team	Enforcement Team 7
Multi-Media			
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$34,000</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	4% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,360</b>
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Notes: The Respondent has 2 prior NOV's dated February 14, 2003 and January 10, 2003 for other violations at this site.

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	25% Reduction	<b>Subtotal 5</b>	<b>-\$8,500</b>
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with a small x)

Notes: The Respondent submitted the required permit application and the permit was approved on June 17, 2004.

<b>Economic Benefit</b>	0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$283	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,000	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$26,860</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<b>Final Penalty Amount</b>	<b>\$26,860</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$26,860</b>
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: A standard deferral is not offered for non-expedited cases.

<b>PAYABLE PENALTY</b>	<b>\$26,860</b>
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<b>Screening Date</b> 20-Jul-2004	<b>Docket No.</b> 2004-1073-WQ-E	<b>PCW</b>
<b>Respondent</b> KC Materials, Inc.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 17629	<i>PCW Revision May 17, 2004</i>	
<b>Reg. Ent. Reference No.</b> RN104373931		
<b>Additional ID No(s).</b> TCEQ Stormwater Permit ID No. TXR05R513		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Kensley Greuter		
<b>Site Address</b>	24711 North Cranes Mill Road #1, New Braunfels, Comal County	

### Compliance History Worksheet

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

Component	Number of...	<i>Enter Number Here</i>	<b>Adjust.</b>
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 4%

**>> 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** The Respondent has 2 prior NOVs dated February 14, 2003 and January 10, 2003 for other violations at this site.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 4%

Screening Date 20-Jul-2004

Docket No. 2004-1073-WQ-E

PCW

Respondent KC Materials, Inc.

Policy Revision 2 (September 2002)

Case ID No. 17629

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN104373931

Additional ID No(s). TCEQ Stormwater Permit ID No. TXR05R513

Media [Statute] Water Quality

Enf. Coordinator Kensley Greuter

Violation Number

1

Primary Rule Cite(s)

40 Code of Federal Regulations § 122.26(c); 30 Tex. Admin. Code § 281.25(a)(4)

Secondary Rule Cite(s)

Violation Description

Failure to obtain authorization to discharge stormwater associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit. Specifically, the Respondent was operating a limestone quarry facility without authorization to discharge storm water, as documented during an investigation conducted on June 15, 2004.

Base Penalty \$10,000

**Environmental, Property and Human Health Matrix**

		Harm				
OR	Release	Major	Moderate	Minor	Percent	
	Actual					
	Potential					

**Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes

100% of the requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

**Violation Events**

Number of Violation Events 34

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$34,000

Thirty-four monthly events are recommended, based on the start date of August 20, 2001 (the first day of violation after delegation of the stormwater program to the State) and continuing until the compliance date of June 17, 2004, to make the penalty commensurate with the situation.

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

Estimated EB Amount \$283

Violation Final Penalty Total \$26,860

This violation Final Assessed Penalty (adjusted for limits) \$26,860

### Economic Benefit Worksheet

**Respondent** KC Materials, Inc.  
**Case ID No.** 17629  
**Reg. Ent. Reference No.** RN104373931  
**Additional ID No(s).** TCEQ Stormwater Permit ID No. TXR05R513  
**Media [Statute]** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**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	\$2,000	20-Aug-2001	17-Jun-2004	2.8	\$283	n/a	\$283
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated cost of submitting a Notice of Intent (NOI) and preparing a stormwater pollution prevention plan (SWP3).

**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 \$2,000

**TOTAL** \$283

## Compliance History

Customer/Respondent/Owner-Operator: CN601533441 KC MATERIALS, INC. Classification: AVERAGE Rating: 3.750

Regulated Entity: RN104373931 KC MATERIALS Classification: AVERAGE Site Rating: 3.75  
ID Number(s):

SLUDGE REGISTRATION 20801

SLUDGE PERMIT 710834

Location: 24711 N CRANES MILL RD, NEW BRAUNFELS, TX, Rating Date: 9/1/03 Repeat Violator: NO  
78133

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: August 10, 2004

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 19, 1999 to June 07, 2004

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Bill Davis Phone: (512) 239-6793

### 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 judgments, 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.)

2 02/18/2003 (22722)  
4 07/22/2003 (144781)  
6 03/06/2003 (22759)

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

Date: 02/14/2003 (22722)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 312, SubChapter G 312.144(e)

Description: The facility was not maintaining records of pathogen and vector attraction reduction on their transportation vehicle.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 312, SubChapter G 312.144(e)

Description: The facility's transporter registration requires that records of pathogen and vector attraction reduction be maintained for 5 years at the beneficial use site. The facility had no records of these requirements at the beneficial use site.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 312, SubChapter G 312.144(e)

Description: The facility's transporter registration requires that records of pathogen and vector attraction reduction be maintained for 5 years at the transporter office. The facility had no records of these requirements at the transporter office.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 312, SubChapter D 312.82(c)(2)

Description: The transporter was not using any alkali addition, or maintaining the pH requirement prior to land applying the septage at the beneficial use site.

Date: 01/10/2003 (22759)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 312, SubChapter D 312.82(c)(2)

Description: The facility was not performing any pathogen reduction requirements to the domestic septage prior to, or after the septage was applied to the beneficial land use site.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
KC MATERIALS, INC.,  
RN104373931**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2004-1073-WQ-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding KC Materials, Inc. ("KC Materials") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and KC Materials, represented by Erich Birch of the law firm of Birch & Becker, L.L.P., appear before the Commission and together stipulate that:

1. KC Materials owns and operates a surface mining operation located at 24711 North Cranes Mill Road, Canyon Lake, Comal County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and KC Materials agree that the Commission has jurisdiction to enter this Agreed Order, and that KC Materials is subject to the Commission's jurisdiction.
4. KC Materials received notice of the violations alleged in Section II ("Allegations") on or about July 21, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by KC Materials of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of six thousand dollars (\$6,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). KC Materials has paid five hundred dollars (\$500.00) of the administrative penalty. The

remaining amount of five thousand five hundred dollars (\$5,500.00) of the administrative penalty shall be payable in eleven (11) monthly payments of five hundred dollars (\$500.00) each. The next monthly payment shall be paid within thirty (30) days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than thirty (30) days following the due date of the previous payment until paid in full. If KC Materials fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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 KC Materials to meet the payment schedule of this Agreed Order constitutes the failure by KC Materials to timely and satisfactorily comply with all of 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 KC Materials have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on June 17, 2004 KC Materials obtained authorization to discharge storm water associated with industrial activity under the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that KC Materials has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

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## **II. ALLEGATIONS**

KC Materials is alleged to have violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization to discharge storm water associated with industrial activity to the waters in the state through an individual permit, the Multi-Sector General Permit

(MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System, or by qualifying for the Conditional No Exposure Certification for Exclusion under 40 C.F.R. § 122.26(g), as documented on June 15, 2004.

### **III. DENIALS**

KC Materials generally denies each allegation in Section II (“Allegations”).

### **IV. ORDER**

1. It is, therefore, ordered by the TCEQ that KC Materials pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and KC Materials’ 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 considering requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: KC Materials, Inc., Docket No. 2004-1073-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. The provisions of this Agreed Order shall apply to and be binding upon KC Materials.
  3. This Agreed Order, issued by the Commission, shall not be admissible against KC Materials 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.
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4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

**KC Materials, Inc.**

**DOCKET NO. 2004-1073-WQ-E**

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5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to KC Materials, or three days after the date on which the Commission mails notice of the Order to KC Materials, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

KC Materials, Inc.  
DOCKET NO. 2004-1073-WQ-E  
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

11/28/07  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

Sunda Weidner

Signature

9-24-07  
Date

Sunda Weidner

Name (Printed or typed)

V.P.  
Title

Authorized representative of  
KC Materials, Inc.