

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2006-1852-AIR-E TCEQ ID: RN104416318 CASE NO.: 31429
RESPONDENT NAME: CONNERS CONSTRUCTION, INC.

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 checked="" 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 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: Off County Road 400, near the intersection of County Road 401, near Groesbeck, Limestone County</p> <p>TYPE OF OPERATION: portable rock crusher</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 September 10, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Shawn Slack, Litigation Division, MC 175, (512) 239-0063 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Jessica Rhodes, Enforcement Section, MC 149, (512) 239-2879 TCEQ Regional Contact: Mr. Salal Tahiri, Waco Regional Office, MC R-9 (254) 761-3008 Respondent: Mr. Gary Connors, President, Connors Construction, Inc., P.O. Box 338, Lott, Texas 76656 Respondent's Attorney: Ms. Molly Cagle, Vinson & Elkins, L.L.P., 2801 Via Fortuna, Suite 100, Austin, Texas 78746</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: August 31, 2006.</p> <p>Date of NOE Relating to this Case: September 14, 2006 (NOE)</p> <p>Background Facts: An EDPRP was filed in this matter on November 9, 2006. A settlement agreement was reached with the respondent on or about April 16, 2007, and a signed Agreed Order was received on April 30, 2007</p> <p>The Respondent does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AIR:</p> <p>Failed to obtain a permit or meet the conditions of a permit by rule. Specifically, the Respondent allegedly operated a rock crusher within ½ mile from an alleged recreational area [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p>Total Assessed: \$10,000</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$10,000</p> <p>The Respondent has paid the penalty in full.</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" 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>Corrective Action(s) Taken</p> <p>The Executive Director recognizes that the Respondent has relocated the rock crusher to a new location and certified that the current location meets the conditions of a permit by rule on or about October 27, 2006.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision April 25, 2006

DATES	Assigned PCW	25-Sep-2006 19-Oct-2006	Screening	09-Oct-2006	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	Conners Construction, Inc.
Reg. Ent. Ref. No.	RN104416318
Facility/Site Region	9-Waco
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	31429	No. of Violations	1
Docket No.	2006-1852-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Jessica Rhodes
Multi-Media		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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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.

Compliance History	0% Enhancement	Subtotal 2, 3, & 7	\$0
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Notes: There is no penalty adjustment.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: Good faith effort is not recommended due to a mandatory statutory penalty amount being assessed.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$72
Approx. Cost of Compliance	\$2,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	900% Enhancement	Adjustment	\$9,000
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes: Tex. Water Code § 7.052(b) requires that the penalty for operating a rock crusher without the required permit is \$10,000 per day.

Final Penalty Amount \$10,000

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,000
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended due to a mandatory statutory penalty amount being assessed.

PAYABLE PENALTY	\$10,000
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Screening Date 09-2006 Docket No. 2006-1852-AIR **PCW**
 Respondent Conners Construction, Inc. Policy Revision 2 (September 2002)
 Case ID No. 31429 PCW Revision April 25, 2006
 Reg. Ent. Reference No. RN104416318
 Media [Statute] Air Quality
 Enf. Coordinator Jessica Rhodes

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 NOV's meeting criteria)	0	0%
	Other written NOV's	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	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%
Other	<i>Please Enter Yes or No</i>		
	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) 0%

>> 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: There is no penalty adjustment.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 09/21/2006 **Docket No.** 2006-1852-AIR **PCW**
Respondent Conners Construction, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 31429 *PCW Revision April 25, 2006*
Reg. Ent. Reference No. RN104416318
Media [Statute] Air Quality
Enf. Coordinator Jessica Rhodes
Violation Number 1
Primary Rule Cite(s) 30 Tex. Admin. Code § 116.110(a)
Secondary Rule Cite(s) Tex. Health and Safety Code §§ 382.085(b) and 382.0518(a)
Violation Description Failure to obtain a permit or meet the conditions of a permit by rule. Specifically, Conners Construction, Inc. owned and operated a rock crusher (PBR Registration No. 73999L001) within one-half mile from a recreational area, as documented during an investigation conducted on August 31, 2006.

Base Penalty \$10,000

>> **Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes The Respondent failed to comply with 100% of the rule requirement; however per Tex. Water Code § 7.052(b), a rock crusher plant operating without a permit is penalized \$10,000 for each day that a continuing violation occurs.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1 **Number of violation days** 1

mark only one use a small x

daily	X
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One single event is recommended based on the August 31, 2006 investigation.

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$72

Violation Final Penalty Total \$10,000

This violation Final Assessed Penalty (adjusted for limits) \$10,000

Economic Benefit Worksheet

Respondent Conners Construction, Inc.
 Case ID No. 31429
 Reg. Ent. Reference No. RN104416318
 Media [Statute] Air 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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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	31-Aug-2006	20-May-2007	0.7	\$72	n/a	\$72
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to obtain a permit. Date required is the investigation date. 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 \$2,000 TOTAL \$72

Compliance History

Customer/Respondent/Owner-Operator: CN601463409 Conners Construction, Inc. Classification: AVERAGE Rating: 1.20
Regulated Entity: RN104416318 CONNERS CRUSHED STONE Classification: HIGH Site Rating: 0.00
MATERIALS PORTABLE PLANT 4
ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 73999L001
Location: PORTABLE Rating Date: September 01 06 Repeat Violator:
NO
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: October 20, 2006
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 20, 2001 to October 20, 2006
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jessica Rhodes Phone: 512-239-2879

Site Compliance History Components

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 11/02/2004 (338862)
2 09/18/2006 (512732)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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 CONNERS
CONSTRUCTION, INC.;
RN104416318

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-1852-AIR-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 Connors Construction, Inc. ("Connors") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Connors, represented by Molly Cagle and Graham E. Sutliff of the law firm Vinson & Elkins, appear before the Commission and together stipulate that:

1. Connors owned and operated a portable rock crusher located off County Road 400, near the intersection of County Road 401, near Groesbeck, Limestone County, Texas (the "Plant").
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. HEALTH & SAFETY CODE ch. 382 and the TCEQ rules.
3. The Commission and Connors agree that the Commission has jurisdiction to enter this Agreed Order, and that Connors is subject to the Commission's jurisdiction.
4. Connors received notice of the violations alleged in Section II ("Allegations") on or about September 19, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Connors of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of ten thousand dollars (\$10,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Conners has paid ten thousand dollars (\$10,000.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Conners 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 Conners has relocated the rock crusher to a new location and certified that the current location meets the conditions of a permit by rule on or about October 27, 2006.
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 Conners has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Conners is alleged to have violated 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a) by failing to obtain a permit or meet the conditions of a permit by rule. Specifically, Conners allegedly operated a rock crusher within ½ mile from an alleged recreational area on or before August 31, 2006.

III. DENIALS

Conners generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Conners pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Conners' 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: Conners Construction, Inc., Docket No. 2006-1852-AIR-E" to:

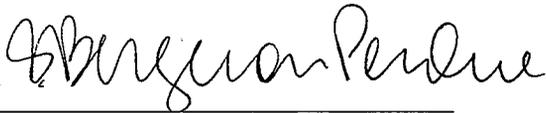
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Conners. Conners is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Conners in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Conners, or three days after the date on which the Commission mails notice of the Order to Conners, 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



8/29/07

For the Executive Director

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

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

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


Signature

4-30-07
Date

GARY CONNERS
Name (Printed or typed)

President
Title

Authorized representative of
Conners Construction, Inc.