

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2005-1884-AIR-E TCEQ ID: RN103217485 CASE NO.: 27287**  
**RESPONDENT NAME: RED DOG TRACK, 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 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 3251 State Highway 108, Strawn, Palo Pinto County</p> <p><b>TYPE OF OPERATION:</b> Rock crusher</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> There was one complaint but the complainant has not expressed an interest to protest this action or speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 29, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney: Ms. Kathleen C. Decker, Litigation Division, MC 175, (512) 239-6500  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  TCEQ Enforcement Coordinator: Mr. Samuel Short, Air Enforcement Section, MC 219, (512) 239-1896  TCEQ Regional Contact: Ms. Alyssa Taylor, DFW Regional Office, MC R-4, (817) 588-5828  Respondent: Mr. Odies Curry, President and Registered Agent, Red Dog Track, Inc., 3271 Highway 108, Strawn, Texas 76476  Respondent's Attorney: Ms. Cynthia Bishop, Gardere Wynne Sewell, LLP, 3000 Thanksgiving Tower, 1601 Elm Street, Dallas, Texas 75201-4761</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b>                      April 27, 2005</p> <p><b>Date of Investigation Relating to this Case:</b>                      May 18, 2005</p> <p><b>Date of NOV/NOE Relating to this Case:</b>                      October 31, 2005 (NOE)</p> <p><b>Background Facts:</b></p> <p>An EDPRP was filed on June 1, 2006. The Respondent received notice of the EDPRP and filed an Answer on June 15, 2006. The matter was referred to SOAH on August 30, 2006. An Agreed Order was signed and received on February 16, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>AIR:</b></p> <p>1. Failed to obtain a permit or satisfy the condition of a permit by rule (PBR) prior to operating a portable rock crusher. Specifically, the rock crusher was replaced in August of 2001 requiring authorization to operate. Based on documentation, the rock crusher operated on April 25, 2005, April 28, 2005 and June 13, 2005 [30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH &amp; SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p> <p>2. Failed to prevent a nuisance condition. Specifically, red clay dust from the Respondent's rock crusher was becoming airborne, being deposited on adjacent properties, and affecting the health of people on adjacent properties [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH &amp; SAFETY CODE § 382.085(a) and (b)].</p>	<p><b>Total Assessed:</b> \$31,925</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Paid/Due to General Revenue:</b>                      \$1,000/\$30,925</p> <p>The Respondent has paid \$1,000 of the administrative penalty. The remaining \$30,925 of the administrative penalty shall be payable in 35 monthly payments. The second monthly payment shall be in the amount of \$1,005. The remaining 34 monthly payments shall be in the amount of \$880 each.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classifications:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <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>The Executive Director recognizes that the Respondent received authorization to operate under PBR 106.142 at a different site on September 8, 2005.</p>

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

<b>DATES</b>	Assigned	31-Oct-2005	Screening	04-Nov-2005	EPA Due	
	PCW	04-Nov-2005				

**RESPONDENT/FACILITY INFORMATION**

Respondent	Red Dog Track, Inc.		
Reg. Ent. Ref. No.	RN103217485		
Facility/Site Region	12-Houston	Major/Minor Source	Minor Source

**CASE INFORMATION**

Enf./Case ID No.	27287	No. of Violations	2
Docket No.	2005-1884-AIR-E	Order Type	Findings
Media Program(s)	Air Quality	Enf. Coordinator	Samuel Short
Multi-Media		EC's Team	Enforcement Team 4
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** 2% Enhancement Subtotals 2, 3, & 7

Notes: A 2% enhancement is recommended for having one NOV for non-similar violations.

**Culpability** No  Subtotal 4

Notes: This case does not meet culpability criteria.

**Good Faith Effort to Comply** 25% Reduction Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		<small>(mark with a small x)</small>

Notes: The respondent achieved compliance on August 11, 2005 when the crusher was voluntarily shut down and on September 8, 2005 when authorization to operate under PBR 106.142 was received for the new crusher on a different site.

**Economic Benefit** 0% Enhancement\* Subtotal 6

Total EB Amounts	\$202	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$1,000	

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 28% Enhancement Adjustment

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

Notes: Recommended adjustment in penalty to reflect Tex. Water Code § 7.052(b) which requires that the penalty for operating a rock crusher without a permit, Violation 1, be \$10,000 per day.

Final Penalty Amount

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL** 0% Reduction Adjustment

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

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

**PAYABLE PENALTY**

**Screening Date** 04-Nov-2005      **Docket No.** 2005-1884-AIR-E      **PCW**  
**Respondent** Red Dog Track, Inc.      *Policy Revision 2 (September 2002)*  
**Case ID No.** 27287      *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN103217485  
**Media [Statute]** Air Quality  
**Enf. Coordinator** Samuel Short

**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 <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	1	2%
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)** 2%

>> 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 2% enhancement is recommended for having one NOV for non-similar violations.

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

Screening Date 04-Nov-2005

Docket No. 2005-1884-AIR-E

PCW

Respondent Red Dog Track, Inc.

Policy Revision 2 (September 2002)

Case ID No. 27287

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103217485

Media [Statute] Air Quality

Enf. Coordinator Samuel Short

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="100%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>	

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

**Respondent** Red Dog Track, Inc.  
**Case ID No.** 27287  
**Reg. Ent. Reference No.** RN103217485  
**Media [Statute]** Air Quality  
**Violation No.** 1

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$1,000	01-Aug-2001	11-Aug-2005	4.0	\$202	n/a	\$202
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: The estimated cost to obtain authorization to operate the rock crusher. Date required is the date in which the new rock crusher was installed and authorization was required. Final date is the date in which the rock crusher voluntarily stopped operation.

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 \$202

**Screening Date** 04-Nov-2005 **Docket No.** 2005-1884-AIR-E **PCW**

**Respondent** Red Dog Track, Inc. *Policy Revision 2 (September 2002)*

**Case ID No.** 27287 *PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN103217485

**Media [Statute]** Air Quality

**Enf. Coordinator** Samuel Short

**Violation Number**

**Primary Rule Cite(s)**

**Secondary Rule Cite(s)**

**Violation Description**  
 The respondent failed to prevent nuisance conditions. Specifically, red clay dust from the respondent's rock crusher was becoming airborne, being deposited on adjacent properties, and affecting the health of people on adjacent properties.

**Base Penalty**

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	X	<input type="text"/>	25%
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

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

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	X

**Violation Base Penalty**

One single event is recommended for the date the complaint was received (April 27, 2005).

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

**Estimated EB Amount**

**Statutory Limit Test**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent Red Dog Track, Inc.  
 Case ID No. 27287  
 Reg. Ent. Reference No. RN103217485  
 Media [Statute] Air 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
<b>Delayed Costs</b>							
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit associated with violation number 1.

**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

TOTAL

# Compliance History

Customer/Respondent/Owner-Operator:	CN601738768 Red Dog Track Inc	Classification: AVERAGE	Rating: 5.50
Regulated Entity:	RN103217485 RED DOG TRACK	Classification: AVERAGE	Site Rating: 4.50
ID Number(s):	STORMWATER PERMIT		TXR05M773
Location:	3251 STATE HIGHWAY 108, STRAWN, TX, 76475	Rating Date: 9/1/2005	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	November 01, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 01, 2000 to November 01, 2005		

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

Name: Samuel Short Phone: 239-5363

## 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.)
 

N/A 1 06/23/2004 (271681)
  
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date: 06/23/2004 (271681)

Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	
Description:	Failure to conduct benchmark monitoring.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	
Description:	Failure to provide a listing of all exposed material.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	
Description:	Failure to conduct quarterly visual monitoring at Outfall 002.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	
Description:	Failure to provide an adequate justification for sampling only one outfall.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	
Description:	Failure to meet the requirements of the annual site evaluation.	
  
- 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  
AGAINST  
RED DOG TRACK, INC.,  
RN103217485**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2005-1884-AIR-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 Red Dog Track, Inc. ("Red Dog") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Litigation Division, and Red Dog, represented by Cynthia J. Bishop, of the law firm of Gardere Wynn Sewell, LP appear before the Commission and together stipulate that:

1. At the time of the violations, Red Dog owned and operated a rock crusher located at 3251 State Highway 108 in Strawn, Palo Pinto County, Texas (the "Plant").
2. The Plant consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. 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.
4. The Commission and Red Dog agree that the Commission has jurisdiction to enter this Agreed Order, and that Red Dog is subject to the Commission's jurisdiction.
5. Red Dog received notice of the violations alleged in Section II ("Allegations") on or about November 5, 2005.
6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Red Dog of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

7. An administrative penalty in the amount of thirty-one thousand nine hundred twenty-five dollars (\$31,925.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Red Dog has paid one thousand dollars (\$1,000.00) of the administrative penalty. The remaining amount of thirty thousand nine hundred twenty-five dollars (\$30,925.00) of the administrative penalty shall be payable in thirty-five monthly payments. The second monthly payment shall be in the amount of one thousand five dollars (\$1,005.00). The remaining thirty-four monthly payments shall be in the amount of eight hundred eighty dollars (\$880.00) each. The second 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 Red Dog 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 Red Dog to meet the payment schedule of this Agreed Order constitutes the failure of Red Dog to timely and satisfactorily comply with all of the terms of this Agreed Order.
8. 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.
9. The Executive Director of the TCEQ and Red Dog have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
10. The Executive Director recognizes that Red Dog received authorization to operate under 30 TEX. ADMIN. CODE § 106.142 (Permit by Rule) at a different site on September 8, 2005.
11. 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 Red Dog has not complied with one or more of the terms or conditions in this Agreed Order.
12. 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.
13. 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

Red Dog is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), by failing to obtain a permit or satisfy the condition of a permit by rule (PBR) prior to operating a portable rock crusher. Specifically, the rock crusher was replaced in August of 2001 requiring authorization to operate. Based on documentation, the rock crusher operated on April 25, 2005, April 28, 2005 and June 13, 2005, as documented during an investigation conducted on May 18, 2005.
2. 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b), by failing to prevent a nuisance condition. Specifically, red clay dust from the respondent's rock crusher was becoming airborne, being deposited on adjacent properties, and affecting the health of people on adjacent properties, as documented during an investigation conducted on May 18, 2005.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

14. It is, therefore, ordered by the TCEQ that Red Dog pay an administrative penalty as set forth in Section II, Paragraph 7 above. The payment of this administrative penalty and Red Dog'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 herein. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Red Dog Track, Inc., Docket No. 2005-1884-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

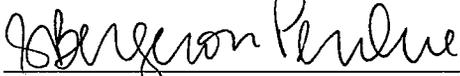
15. The provisions of this Agreed Order shall apply to and be binding upon Red Dog.

16. This Agreed Order, issued by the Commission, shall not be admissible against Red Dog 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.
17. 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.
18. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Red Dog, or three days after the date on which the Commission mails notice of the Order to Red Dog, 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

10/9/07

Date

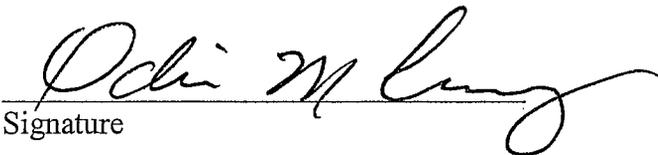
I, the undersigned, have read and understand the attached Agreed Order in the matter of Red Dog Track, Inc. I represent that I am authorized to agree to the attached Agreed Order on behalf of Red Dog Track, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ,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

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

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

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

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



Signature

7-24-07

Date

Odies M GURRY

Name (printed or typed)

Pres.

Title

Authorized Representative

Red Dog Track, Inc.