

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1297-AIR-E **TCEQ ID:** RN102816618 **CASE NO.:** 34407
RESPONDENT NAME: Kiewit Texas Construction L.P.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input 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: Bituma 400 Asphalt Plant, 3.5 miles east of the intersection of Loop 20 and US Highway 59, on the north side of US Highway 59, Webb County</p> <p>TYPE OF OPERATION: Hot mix asphalt plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 February 4, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Daniel Siringi, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8799; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Andy Ternus, Project Manager, Kiewit Texas Construction L.P., 5810 San Bernardo Avenue, Suite 200, Laredo, Texas 78041 Mr. William D. Glaser, Vice President, Kiewit Texas Construction L.P., 5810 San Bernardo Avenue, Suite 200, Laredo, Texas 78041 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 4, 2007</p> <p>Date of NOV/NOE Relating to this Case: July 19, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>1) Failed to prevent visible emissions and opacity of 5 percent or less averaged over a six-minute period. Specifically, visible emissions from the drum dryer exhaust stack averaged 76.46% opacity over a six-minute period [30 TEX. ADMIN. CODE § 116.615(2), Standard Permit No. 77586, General Requirement (1)(L), and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failed to notify the agency within 24 hours of the discovery of an emissions event. Specifically, an opacity event occurred on June 4, 2007 and notification of the event was due to the TCEQ by June 5, 2007 [30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failed to minimize emissions from all in-plant roads associated with operation of the Plant. Specifically, dust was observed emanating from in-plant roads [30 TEX. ADMIN. CODE § 116.516(2), Standard Permit No. 77586, General Requirement (4)(B), and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$3,120</p> <p>Total Deferred: \$624 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,496</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" 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>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, submit an excess opacity event report to the TCEQ Laredo Regional Office for the June 4, 2007 opacity event;</p> <p>b. Within 30 days after the effective date of this Agreed Order, design and implement improvements to procedures to address the opacity event that occurred on June 4, 2007, and to prevent the reoccurrence of similar visible emissions exceedances;</p> <p>c. Within 30 days after the effective date to this Agreed Order, design and implement procedures to ensure the maximum control of dust emissions from in-plant roads; and</p> <p>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 Provisions a. through c.</p>

Additional ID No(s): Air Permit No. 77586

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) PCW Revision June 26, 2007

TCEQ DATES	Assigned	23-Jul-2007	Screening	10-Aug-2007	EPA Due	
	PCW	28-Aug-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Kiewit Texas Construction L.P.		
Reg. Ent. Ref. No.	RN102816618		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34407	No. of Violations	3	
Docket No.	2007-1297-AIR-E	Order Type	1660	
Media Program(s)	Air	Enf. Coordinator	Jessica Rhodes	
Multi-Media		EC's Team	EnforcementTeam 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section			
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1		\$3,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	4% Enhancement	Subtotals 2, 3, & 7	\$120
Notes	Penalty enhancement due two NOVs for unrelated violations.		
Culpability	No	0% Enhancement	Subtotal 4
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
Total EB Amounts	\$236	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$5,700		
SUM OF SUBTOTALS 1-7	Final Subtotal		\$3,120
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		\$3,120
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$3,120
DEFERRAL	20% Reduction	Adjustment	-\$624
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			\$2,496

Screening Date 10-Aug-2007

Docket No. 2007-1297-AIR-E

PCW

Respondent Kiewit Texas Construction L.P.

Policy Revision 2 (September 2002)

Case ID No. 34407

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102816618

Media [Statute] Air

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 (<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 submitted</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%

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) 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

Penalty enhancement due two NOVs for unrelated violations.

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

Screening Date 10-Aug-2007	Docket No. 2007-1297-AIR-E	PCW				
Respondent Kiewit Texas Construction L.P.	<i>Policy Revision 2 (September 2002)</i>					
Case ID No. 34407	<i>PCW Revision June 26, 2007</i>					
Reg. Ent. Reference No. RN102816618						
Media [Statute] Air						
Enf. Coordinator Jessica Rhodes						
Violation Number <input type="text" value="1"/>						
Rule Cite(s)	30 Tex. Admin. Code § 116.615(2), Standard Permit No. 77586, General Requirement (1)(L), and Tex. Health & Safety Code § 382.085(b)					
Violation Description	Failed to prevent visible emissions and opacity of 5 percent or less averaged over a six minute period. Specifically, during an investigation conducted on June 4, 2007, visible emissions from the drum dryer exhaust stack averaged 76.46% opacity over a six-minute period.					
Base Penalty		<input type="text" value="\$10,000"/>				
>> Environmental, Property and Human Health Matrix						
OR	Harm					
	Release	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>		
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>			
		Percent	<input type="text" value="10%"/>			
>> Programmatic Matrix						
		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					Percent	<input type="text" value="0%"/>
Matrix Notes	Human health or the environment was exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.					
		Adjustment		<input type="text" value="\$9,000"/>		
				<input type="text" value="\$1,000"/>		
Violation Events						
		Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="1"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>				
	monthly	<input type="text"/>				
	quarterly	<input type="text"/>				
	semiannual	<input type="text"/>				
	annual	<input type="text"/>				
	single event	<input checked="" type="text" value="x"/>				
				Violation Base Penalty	<input type="text" value="\$1,000"/>	
One single event is recommended.						
Economic Benefit (EB) for this violation			Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$21"/>		Violation Final Penalty Total	<input type="text" value="\$1,040"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$1,040"/>		

Economic Benefit Worksheet

Respondent Kiewit Texas Construction L.P.
Case ID No. 34407
Reg. Ent. Reference No. RN102816618
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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	\$500	4-Jun-2007	1-Apr-2008	0.8	\$21	n/a	\$21
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 Estimated cost to ensure proper operation of the drum dryer exhaust stack. Date Required is based on the date of the violation and 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 TOTAL

\$500	\$21
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Screening Date 10-Aug-2007

Docket No. 2007-1297-AIR-E

PCW

Respondent Kiewit Texas Construction L.P.

Policy Revision 2 (September 2002)

Case ID No. 34407

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102816618

Media [Statute] Air

Enf. Coordinator Jessica Rhodes

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 101.201(e) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to notify the agency within 24 hours of the discovery of an emissions event. Specifically, an opacity event occurred on June 4, 2007 and notification of the event was due to the TCEQ by June 5, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 66

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$1,040

This violation Final Assessed Penalty (adjusted for limits) \$1,040

Economic Benefit Worksheet

Respondent Kiewit Texas Construction L.P.
Case ID No. 34407
Reg. Ent. Reference No. RN102816618
Media Air
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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$200	5-Jun-2007	1-Apr-2008	0.8	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost to submit an emissions event notification. The Date Required is the date that the notification was due. The Final Date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$8

Screening Date 10-Aug-2007

Docket No. 2007-1297-AIR-E

PCW

Respondent Kiewit Texas Construction L.P.

Policy Revision 2 (September 2002)

Case ID No. 34407

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102816618

Media [Statute] Air

Enf. Coordinator Jessica Rhodes

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 116.516(2), Standard Permit No. 77586, General Requirement (4)(B), and Tex. Health and Safety Code § 382.085(b)

Violation Description

Failed to minimize emissions from all in-plant roads associated with operation of the Plant. Specifically, during an investigation conducted on June 4, 2007 dust was observed emanating from in-plant roads.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Human health or the environment was exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an 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="text" value="x"/>

Violation Base Penalty

One single event is recommended for the one documented day of violation.

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 Kiewit Texas Construction L.P.
Case ID No. 34407
Reg. Ent. Reference No. RN102816618
Media Air
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$5,000	4-Jun-2007	1-Apr-2008	0.8	\$207	n/a	\$207

Notes for DELAYED costs

Estimated cost to implement procedures designed to ensure the maximum control of dust emissions. Date Required is the date of the investigation and 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

\$5,000

TOTAL

\$207

Compliance History

Customer/Respondent/Owner-Operator: CN603087032 Kiewit Texas Construction Classification: AVERAGE Rating: 1.5
 Regulated Entity: RN102816618 BITUMA 400 ASPHALT Classification: AVERAGE Site Rating: 1.5

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	21717E
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	921727P
	AIR NEW SOURCE PERMITS	REGISTRATION	77586
	AIR NEW SOURCE PERMITS	REGISTRATION	78355L001
	AIR NEW SOURCE PERMITS	PERMIT	21727
	AIR NEW SOURCE PERMITS	PERMIT	21727A
	AIR NEW SOURCE PERMITS	PERMIT	21727D
	AIR NEW SOURCE PERMITS	PERMIT	21727E
	AIR NEW SOURCE PERMITS	PERMIT	21727F
	AIR NEW SOURCE PERMITS	PERMIT	21727G
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	921727P
	AIR NEW SOURCE PERMITS	AFS NUM	4877700657
	AIR NEW SOURCE PERMITS	REGISTRATION	82386

Location: PORTABLE
 LOCATED ON THE NORTH SIDE OF US 59, APPROXIMATELY 3.5 MILES EAST OF THE INTERSECTION OF LOOP 20 AND US 59
 Rating Date: 9/1/2006 Repeat Violator: No

TCEQ Region: REGION 16 - LAREDO
 Date Compliance History Prepared: August 13, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: August 13, 2002 to August 13, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: 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?
3. If Yes, who is the current owner? Kiewit Texas Construction L.P.
4. If Yes, who was/were the prior owner(s)? Gilbert Texas Construction,
5. When did the change(s) in ownership occur? 3/31/2006

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	09/09/2003	(247836)
2	10/12/2006	(516043)
3	05/31/2007	(561808)
4	07/19/2007	(568121)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	07/15/2005	(394040)
Self Report?	NO	
Citation:	30 TAC Chapter 116, SubChapter B 116.110(a)(1)	
Description:	Failure to obtain permit authorization from the TCEQ prior to construction.	

Classific Moderate

Date: 05/31/2007 (561808)

Self Report? NO Classific Moderate

Citation: 30 TAC Chapter 116, SubChapter F 116.615(8)

Description: Complete failure to submit change of ownership documentation reflecting customer name change and associating the existing regulated entity to the new customer.

Self Report? NO Classific Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(a)

Description: Failure to adhere to the burner fuel specifications listed in TCEQ Air Quality Standard Permit/Registration Number 77586.

Self Report? NO Classific Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(a)

Description: Failure to authorized the 988 hp Caterpillar Generator separately under 30 TAC Chapter 116, 30 TAC Chapter 106, or as appropriate.

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
KIEWIT TEXAS CONSTRUCTION L.P.
RN102816618**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1297-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 Kiewit Texas Construction L.P. ("Kiewit") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Kiewit appear before the Commission and together stipulate that:

1. Kiewit owns and operates a hot mix asphalt plant located 3.5 miles east of the intersection of Loop 20 and US Highway 59, on the north side of US Highway 59 in Webb County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Kiewit agree that the Commission has jurisdiction to enter this Agreed Order, and that Kiewit is subject to the Commission's jurisdiction.
4. Kiewit received notice of the violations alleged in Section II ("Allegations") on or about July 24, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Kiewit of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand One Hundred Twenty Dollars (\$3,120) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Kiewit has paid Two Thousand Four Hundred Ninety-Six Dollars (\$2,496) of the

administrative penalty and Six Hundred Twenty-Four Dollars (\$624) is deferred contingent upon Kiewit'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 Kiewit fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Kiewit to pay all or part of the deferred 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 Kiewit 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 Kiewit 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 Plant, Kiewit is alleged to have:

1. Failed to prevent visible emissions and opacity of 5 percent or less averaged over a six-minute period, in violation of 30 TEX. ADMIN. CODE § 116.615(2), Standard Permit No. 77586, General Requirement (1)(L), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 4, 2007. Specifically, visible emissions from the drum dryer exhaust stack averaged 76.46% opacity over a six-minute period.
2. Failed to notify the agency within 24 hours of the discovery of an emissions event, in violation of 30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 4, 2007. Specifically, an opacity event occurred on June 4, 2007 and notification of the event was due to the TCEQ by June 5, 2007.
3. Failed to minimize emissions from all in-plant roads associated with operation of the Plant, in violation of 30 TEX. ADMIN. CODE § 116.516(2), Standard Permit No. 77586, General Requirement (4)(B), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 4, 2007. Specifically, dust was observed emanating from in-plant roads.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Kiewit pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Kiewit'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: Kiewit Texas Construction L.P., Docket No. 2007-1297-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. It is further ordered that Kiewit shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Agreed Order, submit an excess opacity event report to the TCEQ Laredo Regional Office for the June 4, 2007 opacity event;
 - b. Within 30 days after the effective date of this Agreed Order, design and implement improvements to procedures to address the opacity event that occurred on June 4, 2007, and to prevent the reoccurrence of similar visible emissions exceedances;
 - c. Within 30 days after the effective date to this Agreed Order, design and implement procedures to ensure the maximum control of dust emissions from in-plant roads; 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. 2.a. through 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that 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:

Air Section, Manager
Laredo Regional Office
Texas Commission on Environmental Quality
1403 Seymour, Suite 2
Laredo, Texas 78040-8752

3. The provisions of this Agreed Order shall apply to and be binding upon Kiewit. Kiewit 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.
4. If Kiewit 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, Kiewit's failure to comply is not a violation of this Agreed Order. Kiewit shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Kiewit shall notify the Executive Director within seven days after Kiewit becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Kiewit shall be made in writing to the Executive Director. Extensions are not effective until Kiewit receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Kiewit in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Kiewit, or three days after the date on which the Commission mails notice of the Order to Kiewit, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Kiewit Texas Construction L.P.
DOCKET NO. 2007-1297-AJR-E
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Dine
For the Executive Director

2/20/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCQE, 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
 - TCQE seeking other relief as authorized by law.
- In addition, any falsification of any compliance documents may result in criminal prosecution.

[Signature]
Signature

2/5/08
Date

DAVID HOYT
Name (Printed or typed)
Authorized Representative of
Kiewit Texas Construction L.P.

PROJECT ENGINEER
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.

