

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2  
 DOCKET NO.: 2005-1580-AIR-E TCEQ ID: RN101293041 CASE NO.: 26763  
 RESPONDENT NAME: CITY CONCRETE, 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

SITE WHERE VIOLATION(S) OCCURRED: 1204 28<sup>th</sup> Street, Wichita Falls, Wichita County

TYPE OF OPERATION: Concrete batch plant

SMALL BUSINESS:  Yes  No

OTHER SIGNIFICANT MATTERS: One complaint was received July 12, 2005. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED, and the Respondent has expressed an interest in this matter. The complainant has not expressed desire to speak or protest the matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 24, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846  
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  
 TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, Air Enforcement Section, MC R-4, (817) 588-5890  
 TCEQ Regional Contact: Mr. Mike Taylor, Abilene Regional Office, MC R-3, (325) 698-6122  
 Respondent: Mr. Tim Foley, Owner, City Concrete, Inc., 1204 28th Street, Wichita Falls, Texas 76302  
 Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: July 12, 2005</p> <p>Date of Investigation Relating to this Case: July 18, 2005</p> <p>Date of NOV/NOE Relating to this Case: August 28, 2005 (NOE)</p> <p>Background Facts: The EDRP was filed August 7, 2007. A hearing request was received August 20, 2007. An Agreed Order was signed on January 10, 2008</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database.</p> <p>AIR</p> <p>Failed to obtain authorization prior to operating a source of air emissions [30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH &amp; SAFETY CODE §§ 382.085(b) and 382.0518(a)].</p>	<p>Total Assessed: \$27,940</p> <p>Total Deferred: \$0</p> <p>Total Paid/Due to General Revenue: \$900/\$27,040</p> <p>The Respondent has paid \$900 of the administrative penalty. The remaining amount of \$27,040 shall be payable in 32 monthly payments of \$845 each.</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>The Executive Director recognizes that the Respondent applied for and obtained Permit No. 76868 on December 2, 2005.</p>

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

TCEQ  
 DATES Assigned   
 PCW  Screening  EPA Due

RESPONDENT/FACILITY INFORMATION  
 Respondent   
 Reg. Ent. Ref. No.   
 Facility/Site Region  Major/Minor Source

CASE INFORMATION  
 Enf./Case ID No.  No. of Violations   
 Docket No.  Order Type   
 Media Program(s)  Enf. Coordinator   
 Multi-Media  EC's Team   
 Admin. Penalty \$ Limit Minimum  Maximum

**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  Subtotals 2, 3, & 7

Notes

Culpability   Subtotal 4

Notes

Good Faith Effort to Comply  Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	<i>(mark with a small x)</i>

Notes

Economic Benefit  Subtotal 6   
 Total EB Amounts  \*Capped at the Total EB \$ Amount  
 Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE  Adjustment   
 Reduces or enhances the Final Subtotal by the indicated percentage (Enter number only, e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

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

Notes

PAYABLE PENALTY

Screening Date 06-Sep-2005

Docket No. 2005-1580-AIR-E

PCW

Respondent City Concrete, Inc.

Policy Revision ? (September 2002)

Case ID No. 26763

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101293041

Media [Statute] Air Quality

Enf. Coordinator Jorge Ibarra, P.E.

### 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%
	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
Orders	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 judgments or consent decrees meeting criteria</i> )	0	0%
Consent Decrees	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%
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

The penalty was enhanced due to an NOV without the same or similar type of violations.

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

Screening Date 06-Sep-2005

Docket No. 2005-1580-AIR-E

PCW

Respondent City Concrete, Inc.

Form 1, created 12/14/04

Case ID No. 26763

PCW Version 05/15/2005

Reg. Ent. Reference No. RN101293041

Media [Statute] Air Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Primary Rule Cite(s) 30 TAC § 116.110(a)(1)

Secondary Rule Cite(s) Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description Failure to obtain authorization to operate a source of air emissions. Specifically, Permit No. 4771 was allowed to expire on November 12, 2003 and City Concrete, Inc. continued to operate the baghouses for the cement silos.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			Percent
		Major	Moderate	Minor	
OR	Actual				
	Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			

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

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 22

	Frequency	Count
use a small ?	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$22,000

The penalty was calculated from the date the permit was allowed to expire (November 12, 2003) to the screening date (September 6, 2005).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$145

Violation Final Penalty Total \$27,940

This violation Final Assessed Penalty (adjusted for limits) \$27,940

### Economic Benefit Worksheet

Respondent City Concrete, Inc.  
 Case ID No. 26763  
 Reg. Ent. Reference No. RN101293041  
 Media [Statute] Air Quality  
 Violation No. 1

Percent Interest 5.0  
 Years of Depreciation 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	12-Nov-2003	04-Oct-2006	2.9	\$145	n/a	\$145
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to obtain the required permit to construct. Date Required = first day of operation without authorization; Final Date = expected date of compliance.

Item Description	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>AVOIDED COSTS</b>				
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 **\$145**

## Compliance History

Customer/Respondent/Owner-Operator:	CN600467559 City Concrete, Inc.	Classification: AVERAGE	Rating: 1.72
Regulated Entity:	RN101293041 CITY CONCRETE PLANT NO 1	Classification: AVERAGE	Site Rating: 0.50
ID Number(s):	AIR NEW SOURCE PERMITS	REGISTRATION	76727
	AIR NEW SOURCE PERMITS	PERMIT	76868
	AIR NEW SOURCE PERMITS	PERMIT	4771
	AIR NEW SOURCE PERMITS	PERMIT	44054
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	WH00160
	AIR OPERATING PERMITS	PERMIT	4771
	STORMWATER	PERMIT	TXR050787
Location:	1204 28TH ST, WICHITA FALLS, TX, 76302	Rating Date: September 01 05	Repeat Violator: NO
TCEO Region:	REGION 03 - ABILENE		
Date Compliance History Prepared:	October 05, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 05, 2000 to October 05, 2005		

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

### 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?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

#### 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 10/22/2002 (14225)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 09/04/2002 (6186)  
Self Report? NO  
Citation: 30 TAC Chapter 101, SubChapter A 101.4  
Description: Air Nuisance  
Classification: Minor
- 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  
CITY CONCRETE, INC.  
RN101293041

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2005-1580-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 City Concrete, Inc. ("City Concrete") 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 City Concrete, appear before the Commission and together stipulate that:

1. City Concrete owns and operates a concrete batch plant located at 1204 28th Street in Wichita Falls, Wichita 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 TCEQ rules.
3. The Commission and City Concrete agree that the Commission has jurisdiction to enter this Agreed Order, and that City Concrete is subject to the Commission's jurisdiction.
4. City Concrete received notice of the violations alleged in Section II ("Allegations") on or about August 28, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by City Concrete of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of twenty-seven thousand nine hundred forty dollars (\$27,940.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). City Concrete has paid nine hundred dollars (\$900.00) of the

administrative penalty. The remaining amount of twenty-seven thousand forty dollars (\$27,040.00) of the administrative penalty shall be payable in 32 monthly payments of eight hundred forty-five dollars (\$845.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If City Concrete 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, City Concrete's failure to meet the payment schedule of this Agreed Order constitutes the failure by City Concrete 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 City Concrete 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 the Respondent applied for and obtained Permit No. 76868 on December 2, 2005.
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 City Concrete 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

City Concrete is alleged to have violated 30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a), by failing to obtain authorization prior to operating a source of air emissions as documented during an inspection conducted on July 18, 2005.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that City Concrete pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and City Concrete'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 considering or 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: City Concrete, Inc., Docket No. 2005-1580-AIR" 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 City Concrete. City Concrete 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 City Concrete 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 City Concrete, or three days after the date on which the Commission mails notice of the Order to City Concrete, 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

John Ferguson Penland

For the Executive Director

2/27/08

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 City Concrete's failure to timely pay the penalty amount, may result in:

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

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution

Paul Foley

Signature

1/10/08

Date

PAUL FOLEY

Name (Printed or typed)

PRESIDENT

Title

Authorized representative of  
City Concrete, Inc.