

CAPTION: Docket No. 2008-0874-AIR-E. Consideration of an Agreed Order assessing administrative penalties against J.C. Evans Construction Co., LP in Bexar County; RN105062459; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Terry Murphy, Bryan Sinclair)

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0874-AIR-E **TCEQ ID:** RN105062459 **CASE NO.:** 35961

RESPONDENT NAME: J.C. Evans Construction Co., LP

| | | |
|---|---|--|
| 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: Evans Portable Rock Crushing Plant 4, located along the east side of Kyle Seale Parkway, just east of Vista Colina, approximately two miles north of West Loop 1604 North, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Portable rock crusher</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 September 8, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Terry Murphy, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-5025; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Blake Kohlman, President, J.C. Evans Construction Co., LP, P.O. Box 1216, Leander, Texas 78646 Mr. Allen Schwanke, Vice President Branch Operations, J.C. Evans Construction Co., LP, P.O. Box 1216, Leander, Texas 78646 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: March 26, 2008</p> <p>Date of NOE Relating to this Case: May 23, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>1) Failure to comply with the Standard Permit condition limiting the number of operating hours. Specifically, the permit limited the operating hours to 1,080 hours, but the Respondent continued to operate the crusher for an additional 66 hours, from November 21 through December 7, 2007 [Air Quality Standard Permit for Temporary Rock Crushers, Condition (3)(E), 30 TEX. ADMIN. CODE §§ 116.115(b) and 116.615(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to comply with the recordkeeping requirements of the Standard Permit. Specifically, the permit required the Respondent to maintain rolling 24 months of operating records together with the crusher, but those records were not with the crusher [Air Quality Standard Permit for Temporary Rock Crushers, Condition (1)(M), 30 TEX. ADMIN. CODE §§ 116.115(b) and 116.615(8) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> | <p>Total Assessed: \$1,900</p> <p>Total Deferred: \$380 <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: \$1,520</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent:</p> <p>a) Moved the crusher off the site on or after December 7, 2007, and received authorization from the TCEQ on February 15, 2008 to relocate the crusher to 1085 County Road 239, in Florence, Williamson County;</p> <p>b) By May 30, 2008, implemented recordkeeping changes designed to ensure records of the crusher's operation are kept together with the crusher; and</p> <p>c) By May 30, 2008, implemented enhanced monitoring procedures designed to ensure daily oversight of the hours of operation, as well as the number of days of operation.</p> |

Additional ID No(s): None



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

| | | | | | | |
|-------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 27-May-2008 | Screening | 28-May-2008 | EPA Due | |
| | PCW | 16-Jun-2008 | | | | |

| RESPONDENT/FACILITY INFORMATION | | | |
|---------------------------------|---------------------------------|--------------------|-------|
| Respondent | J.C. Evans Construction Co., LP | | |
| Reg. Ent. Ref. No. | RN105062459 | | |
| Facility/Site Region | 13-San Antonio | Major/Minor Source | Minor |

| CASE INFORMATION | | | |
|---------------------------------|-----------------|-----------------------|--------------------|
| Enf./Case ID No. | 35961 | No. of Violations | 2 |
| Docket No. | 2008-0874-AIR-E | Order Type | 1660 |
| Media Program(s) | AIR | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Terry Murphy |
| | | 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) | <i>Subtotal 1</i> | \$2,000 |
|---|-------------------|---------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|--------------------|------------------|--------------------------------|-------|
| Compliance History | 5.0% Enhancement | <i>Subtotals 2, 3, & 7</i> | \$100 |
|--------------------|------------------|--------------------------------|-------|

Notes: The penalty was enhanced by one NOV for same or similar violations.

| | | | | |
|-------------|----|------------------|-------------------|-----|
| Culpability | No | 0.0% Enhancement | <i>Subtotal 4</i> | \$0 |
|-------------|----|------------------|-------------------|-----|

Notes: The Respondent does not meet the culpability criteria.

| | | |
|---|-------------------|-------|
| Good Faith Effort to Comply Total Adjustments | <i>Subtotal 5</i> | \$200 |
|---|-------------------|-------|

| | | | |
|------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | <i>Subtotal 6</i> | \$0 |
|------------------|-------------------|-------------------|-----|

Total EB Amounts: \$35
 Approx. Cost of Compliance: \$2,000
 *Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | <i>Final Subtotal</i> | \$1,900 |
|-----------------------------|-----------------------|---------|

| | | | |
|---|------|-------------------|-----|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% | <i>Adjustment</i> | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$1,900

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | <i>Final Assessed Penalty</i> | \$1,900 |
|-----------------------------------|-------------------------------|---------|

| | | | |
|-----------------|-----------------|-------------------|--------|
| DEFERRAL | 20.0% Reduction | <i>Adjustment</i> | -\$380 |
|-----------------|-----------------|-------------------|--------|

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

Notes:

Deferral offered for expedited settlement.

| | | |
|------------------------|--|---------|
| PAYABLE PENALTY | | \$1,520 |
|------------------------|--|---------|

Screening Date 28-May-2008

Docket No. 2008-0874-AIR-E

PCW

Respondent J.C. Evans Construction Co., LP

Policy Revision 2 (September 2002)

Case ID No. 35961

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105062459

Media [Statute] AIR

Enf. Coordinator Terry Murphy

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 NOVs meeting criteria) | 1 | 5% |
| | Other written NOVs | 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 judgments 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 submitted) | 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% |
| <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) 5%

>> 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 by one NOV for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

| | | | | |
|--------------------------------|---------------------------------|---|-----------------|------------|
| Screening Date | 28-May-2008 | Docket No. | 2008-0874-AIR-E | PCW |
| Respondent | J.C. Evans Construction Co., LP | <i>Policy Revision 2 (September 2002)</i> | | |
| Case ID No. | 35961 | <i>PCW Revision June 12, 2008</i> | | |
| Reg. Ent. Reference No. | RN105062459 | | | |
| Media [Statute] | AIR | | | |
| Enf. Coordinator | Terry Murphy | | | |

Violation Number

Rule Cite(s) Air Quality Standard Permit for Temporary Rock Crushers, Condition (3)(E), 30 Tex. Admin. Code §§ 116.115(b) and 116.615(2), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the Standard Permit condition limiting the number of operating hours. Specifically, the permit limited the operating hours to 1,080 hours, but the Respondent continued to operate the crusher for an additional 66 hours, from November 21 through December 7, 2007, as documented during an investigation conducted on March 26, 2008.

Base Penalty

>> Environmental, Property and Human Health Matrix

| | | | | | |
|----|-------------|----------------------|----------------------|---|-------------------------------------|
| OR | Harm | | | | |
| | Release | Major | Moderate | | Minor |
| | Actual | <input type="text"/> | <input type="text"/> | | <input checked="" type="checkbox"/> |
| | 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 were exposed to insignificant amounts of pollutants not exceeding levels 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 checked="" type="checkbox"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

One quarterly event is recommended.

Good Faith Efforts to Comply Reduction

| | | |
|---------------|----------------------|-------------------------------------|
| | Before NOV | NOV to EDRP/Settlement Offer |
| Extraordinary | <input type="text"/> | <input type="text"/> |
| Ordinary | <input type="text"/> | <input checked="" type="checkbox"/> |
| N/A | (mark with x) | |

Notes The Respondent completed corrective actions by May 30, 2008.

Violation Subtotal

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 J.C. Evans Construction Co., LP
 Case ID No. 35961
 Reg. Ent. Reference No. RN105062459
 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 | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | \$1,000 | 21-Nov-2007 | 30-May-2008 | 0.52 | \$26 | n/a | \$26 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated costs to improve oversight and recordkeeping measures. The Date Required is the initial date the hours of operation exceeded the limits, and the Final Date is when the corrective actions were completed.

Avoided Costs

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

| | | | | | | | |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$26

| | | | |
|--|---|---|--|
| Screening Date 28-May-2008 | Docket No. 2008-0874-AIR-E | PCW | |
| Respondent J.C. Evans Construction Co., LP | <small>Policy Revision 2 (September 2002)</small> | | |
| Case ID No. 35961 | <small>PCW Revision June 12, 2008</small> | | |
| Reg. Ent. Reference No. RN105062459 | | | |
| Media [Statute] AIR | | | |
| Enf. Coordinator Terry Murphy | | | |
| Violation Number <input type="text" value="2"/> | | | |
| Rule Cite(s) | Air Quality Standard Permit for Temporary Rock Crushers, Condition (1)(M), 30 Tex. Admin. Code §§ 116.115(b) and 116.615(8), and Tex. Health & Safety Code § 382.085(b) | | |
| Violation Description | Failed to comply with the recordkeeping requirements of the Standard Permit. Specifically, the permit required the Respondent to maintain rolling 24 months of operating records together with the crusher, but those records were not with the crusher, as documented during an investigation conducted on March 26, 2008. | | |
| Base Penalty | | <input type="text" value="\$10,000"/> | |
| >> Environmental, Property and Human Health Matrix | | | |
| OR | Harm | | |
| | Major | Moderate | Minor |
| | Actual | <input type="text"/> | <input type="text"/> |
| | Potential | <input type="text"/> | <input type="text"/> |
| | | | Percent <input type="text"/> |
| >> Programmatic Matrix | | | |
| | Falsification | Major | Moderate |
| | <input type="text"/> | <input checked="" type="checkbox"/> | <input type="text"/> |
| | | | Percent <input type="text" value="10%"/> |
| Matrix Notes | The Respondent failed to comply with 100% of the requirement. | | |
| 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"/> | |
| <small>mark only one with an x</small> | 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 <input type="text" value="\$1,000"/> |
| One single event is recommended. | | | |
| Good Faith Efforts to Comply | | | <input type="text" value="10.0% Reduction"/> |
| | | | <input type="text" value="\$100"/> |
| | Extraordinary | Before NOV | NOV to EDPRP/Settlement Offer |
| | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | Ordinary | <input type="text"/> | <input checked="" type="checkbox"/> |
| | N/A | (mark with x) | |
| | N/A | <input type="text"/> | |
| Notes | The Respondent completed corrective actions by May 30, 2008. | | |
| Violation Subtotal | | | <input type="text" value="\$900"/> |
| Economic Benefit (EB) for this violation | | | |
| Statutory Limit Test | | | |
| Estimated EB Amount <input type="text" value="\$9"/> | | Violation Final Penalty Total <input type="text" value="\$950"/> | |
| This violation Final Assessed Penalty (adjusted for limits) | | | <input type="text" value="\$950"/> |

Economic Benefit Worksheet

Respondent J.C. Evans Construction Co., LP
 Case ID No. 35961
 Reg. Ent. Reference No. RN105062459
 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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|---------|-------------|-------------|------|-----|-----|-----|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | \$1,000 | 26-Mar-2008 | 30-May-2008 | 0.18 | \$9 | n/a | \$9 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs
 Estimated costs to provide additional personnel training, oversight, and/or to improve the recordkeeping system. The Date Required is the date of the investigation, and the Final Date is when the corrective actions were completed.

Avoided Costs

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

| | | | | | | | |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,000

TOTAL \$9

Compliance History

Customer/Respondent/Owner-Operator: CN602862716 J.C. Evans Construction Co., LP Classification: AVERAGE Rating: 2.98

Regulated Entity: RN105062459 EVANS PORTABLE ROCK CRUSHING PLANT 4 Classification: AVERAGE Site Rating: 12.00

ID Number(s): Serial No. 406808

Location: Located along the east side of Kyle Seale Parkway, just east of Vista Colina, approximately 2 miles north of West Loop 1604 North, San Antonio, Bexar County Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: May 28, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 28, 2003 to May 28, 2008

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

Name: Terry Murphy Phone: (512) 239-5025

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 | 09/05/2007 | (564239) |
| 2 | 02/13/2008 | (618053) |
| 3 | 05/23/2008 | (680030) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|---|------------------|--|--------------------------|
| 1 | Date: 05/25/2007 | (557863) | |
| | Self Report? | NO | Classification: Moderate |
| | Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c) | |
| | Description: | Conveyor covers were not being used, in violation of 30 TAC §116.115(c). | |
| | Self Report? | NO | Classification: Moderate |
| | Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c) | |
| | Description: | Written records were not available at the site, in violation of 30 TAC §116.115(c). | |
| | Self Report? | NO | Classification: Moderate |
| | Citation: | 30 TAC Chapter 101, SubChapter A 101.20(1) 30 TAC Chapter 116, SubChapter B 116.115(c) | |
| | Description: | No record of a performance test was provided for this crusher, in violation of 30 TAC §116.115(c) and 30 TAC §101.20(1). | |
| | Self Report? | NO | Classification: Moderate |
| | Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c) | |
| | Description: | The crusher exceeded the 180 day on-site limit, in violation of 30 TAC §116.115(c). | |
- 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
J.C. EVANS CONSTRUCTION CO., LP
RN105062459

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0874-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 J.C. Evans Construction Co., LP ("the Respondent") 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 the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operated a portable rock crusher, Serial No. 406808, located along the east side of Kyle Seale Parkway, just east of Vista Colina, approximately two miles north of West Loop 1604 North in San Antonio, Bexar 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 the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 28, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Nine Hundred Dollars (\$1,900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Twenty Dollars (\$1,520) of the

administrative penalty and Three Hundred Eighty Dollars (\$380) is deferred contingent upon the Respondent'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 the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 the Respondent 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:
 - a. Moved the crusher off the site on or after December 7, 2007, and received authorization from the TCEQ on February 15, 2008 to relocate the crusher to 1085 County Road 239, in Florence, Williamson County;
 - b. By May 30, 2008, implemented recordkeeping changes designed to ensure records of the crusher's operation are kept together with the crusher; and
 - c. By May 30, 2008, implemented enhanced monitoring procedures designed to ensure daily oversight of the hours of operation, as well as the number of days of operation.
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 the Respondent 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

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to comply with the Standard Permit condition limiting the number of operating hours, in violation of Air Quality Standard Permit for Temporary Rock Crushers, Condition (3)(E), 30 TEX. ADMIN. CODE §§ 116.115(b) and 116.615(2), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 26, 2008. Specifically, the permit limited the operating hours to 1,080 hours, but the Respondent continued to operate the crusher for an additional 66 hours, from November 21 through December 7, 2007.

2. Failed to comply with the recordkeeping requirements of the Standard Permit, in violation of Air Quality Standard Permit for Temporary Rock Crushers, Condition (1)(M), 30 TEX. ADMIN. CODE §§ 116.115(b) and 116.615(8), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 26, 2008. Specifically, the permit required the Respondent to maintain rolling 24 months of operating records together with the crusher, but those records were not with the crusher.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: J.C. Evans Construction Co., LP, Docket No. 2008-0874-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 the Respondent. The Respondent 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 the Respondent 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), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

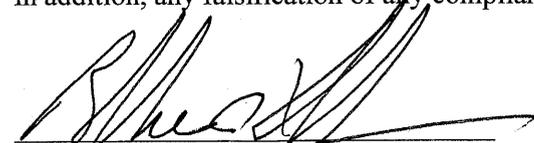
Date 8/21/2008

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 TCEQ, 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
- TCEQ seeking other relief as authorized by law.

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



Signature

Date 7/2/08

BLAKE KOHLMAN
Name (Printed or typed)
Authorized Representative of
J.C. Evans Construction Co., LP

PRESIDENT
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.

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