

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-0813-IWD-E **TCEQ ID:** RN105471445 **CASE NO.:** 35896
RESPONDENT NAME: TXI Operations, 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 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 checked="" 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: TXI Operations Lewisville, 3001 State Highway 121 South, Lewisville, Denton County</p> <p>TYPE OF OPERATION: Ready-mixed concrete plant</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 1, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3048; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. James B. Rogers, Vice President Consumer Products, TXI Operations, LP, 1341 W. Mockingbird Lane, Dallas, Texas 75247 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 type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 27, 2007 and May 15, 2008</p> <p>Date of NOV/NOE Relating to this Case: December 5, 2007 (NOE)</p> <p>Background Facts: These were routine record reviews.</p> <p>WATER:</p> <p>1) Failure to comply with permit effluent limits for pH and total suspended solids [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110631, Part III, Permit Requirements, Section A].</p> <p>2) Failure to monitor for each parameter included in the permit [30 TEX. ADMIN. CODE § 319.4 and TPDES General Permit No. TXG110631, Part III, Permit Requirements, Section A].</p> <p>3) Failure to pay outstanding Above Ground Storage Tank fees for Account No. 0007328A for Fiscal Year 2008 [30 TEX. ADMIN. CODE § 21.4 and TEX. WATER CODE § 5.702].</p>	<p>Total Assessed: \$3,566</p> <p>Total Deferred: \$713 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$2,853</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 on July 1, 2008, the Respondent started monitoring for each parameter included in the permit.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, pay all outstanding fees, including any associated penalties and interest;</p> <p>b. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES General Permit No. TXG110631, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations; and</p> <p>c. Within 75 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 Provision a. and b.</p>

Additional ID No(s): TXG110631



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

DATES	Assigned	22-Apr-2008	Screening	15-May-2008	EPA Due	
	PCW	15-Aug-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	TXI Operations, LP		
Reg. Ent. Ref. No.	RN105471445		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35896	No. of Violations	3
Docket No.	2008-0813-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Heather Brister
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
Compliance History	40.0% Enhancement	<i>Subtotals 2, 3, & 7</i>
		\$1,000

Notes: The Respondent self-reported eight months of effluent violations.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0.0% Reduction	<i>Subtotal 5</i>	\$0
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	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.	

	Total EB Amounts	\$216	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
	Approx. Cost of Compliance	\$2,076	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$3,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.9%	<i>Adjustment</i>	\$66
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Notes: Recommended enhancement to capture the avoided cost associated with the violations.

Final Penalty Amount	\$3,566
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$3,566
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$713
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Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,853
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Screening Date 15-May-2008	Docket No. 2008-0813 -IWD-E	PCW
Respondent TXI Operations, LP	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35896	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN105471445		
Media [Statute] Water Quality		
Enf. Coordinator Heather Brister		

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>	8	40%
	Other written NOVs	0	0%
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%
<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) 40%

>> 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 Respondent self-reported eight months of effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 40%

Screening Date	15-May-2008	Docket No.	2008-0813-IWD-E	PCW
Respondent	TXI Operations, LP	Policy Revision 2 (September 2002)		
Case ID No.	35896	PCW Revision April 29, 2008		
Reg. Ent. Reference No.	RN105471445			
Media [Statute]	Water Quality			
Enf. Coordinator	Heather Brister			

Violation Number

Rule Cite(s)

Violation Description

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	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

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 TXI Operations, LP
Case ID No. 35896
Reg. Ent. Reference No. RN105471445
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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				0.00	\$0	n/a	\$0
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)	\$2,000	1-Apr-2007	30-Sep-2008	1.50	\$150	n/a	\$150

Notes for DELAYED costs Estimated cost for implementing necessary rehabilitation work to the facility. Date Required is the initial month of noncompliance. Final Date is the anticipated date of compliance.

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 \$2,000

TOTAL \$150

Screening Date	15-May-2008	Docket No.	2008-0813 -IWD-E	PCW
Respondent	TXI Operations, LP	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	35896	<i>PCW Revision April 29, 2008</i>		
Reg. Ent. Reference No.	RN105471445			
Media [Statute]	Water Quality			
Enf. Coordinator	Heather Brister			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 319.4 and TPDES General Permit No. TXG110631, Part III, Permit Requirements, Section A			
Violation Description	Failed to monitor for each parameter included in the permit. Specifically, the Respondent did not analyze total suspended solids for the monitoring period ending June 30, 2007, as documented by a record review conducted on November 27, 2007.			
Base Penalty				\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Major	Moderate	Minor	
	Actual			
	Potential		x	Percent 5%

>> Programmatic Matrix

	Major	Moderate	Minor	
Falsification				Percent 0%

Matrix Notes
 Failure to analyze for the required parameter could result in exposure to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$66 **Violation Final Penalty Total** \$713

This violation Final Assessed Penalty (adjusted for limits) \$713

Economic Benefit Worksheet

Respondent TXI Operations, LP
Case ID No. 35896
Reg. Ent. Reference No. RN105471445
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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				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

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$76	20-Jul-2007	15-May-2008	0.82	\$3	\$62	\$66
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

Estimated cost to sample and submit the Discharge Monitoring Report ("DMR") for the annual monitoring period ending June 30, 2007. Date required is the date the DMR was due, Final date is the date of screening.

Approx. Cost of Compliance

\$76

TOTAL

\$66

Screening Date	15-May-2008	Docket No.	2008-0813 -IWD-E	PCW
Respondent	TXI Operations, LP	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	35896	<i>PCW Revision April 29, 2008</i>		
Reg. Ent. Reference No.	RN105471445			
Media [Statute]	Water Quality			
Enf. Coordinator	Heather Brister			
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code § 21.4 and Tex. Water Code § 5.702			
Violation Description	Failed to pay outstanding above ground storage tank fees for Account No. 0007328A for Fiscal Year 2008.			
Base Penalty				\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				0%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					0%

Matrix Notes

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 type="text"/>

Violation Base Penalty

No penalty is assessed for this violation, as penalty and interest will be assessed in the next billing cycle.

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 TXI Operations, LP
Case ID No. 35896
Reg. Ent. Reference No. RN105471445
Media Water Quality
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
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				0.00	\$0	n/a	\$0
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

N/A

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

\$0

TOTAL

\$0

Effluent Limit Violation Table

table rev.

Respondent	TXI Operations, LP	
ID Number(s)	TPDES General Permit No. TXG110631	
Docket Number	2008-0813-IWD-E	
Enf. Coordinator	Heather Brister	

Corresponds to Violation Number: 1

<i>EFFLUENT PARAMETER</i>		
<i>Permit Limit</i>		
	pH Maximum 9.0	Total Suspended Solids Daily Maximum Concentration 65 Milligrams per Liter
<i>Month/Year</i>		
Apr-07	9.5	c
May-07	9.7	c
Jul-07	10	94

c = compliant

Compliance History

Customer/Respondent/Owner-Operator: CN600125157 TXI Operations, LP Classification: AVERAGE Rating: 1.92
 Regulated Entity: RN105471445 TXI OPERATIONS LEWISVILLE Classification: AVERAGE Site Rating: 0.23
 ID Number(s): WASTE WATER GENERAL PERMIT PERMIT TXG110631
 Location: 3001 State Highway 121 South, Lewisville, Denton County, Texas
 TCEQ Region: REGION 04 - DFW METROPLEX
 Date Compliance History Prepared: May 13, 2008
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: May 13, 2003 to May 13, 2008

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

Name: Heather Brister Phone: 254/761-3034

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	07/21/2003	(331169)
2	07/21/2003	(331170)
3	07/21/2003	(331171)
4	10/17/2003	(331172)
5	10/17/2003	(331173)
6	10/17/2003	(331174)
7	01/21/2004	(331175)
8	01/21/2004	(331176)
9	01/21/2004	(331177)
10	04/12/2004	(331164)
11	04/12/2004	(331166)
12	04/22/2004	(331165)
13	04/22/2004	(331167)
14	04/22/2004	(331168)
15	07/20/2004	(369292)
16	07/20/2004	(369293)
17	07/20/2004	(369294)
18	10/22/2004	(369295)
19	10/22/2004	(369296)
20	01/20/2005	(391490)
21	01/20/2005	(391491)
22	01/20/2005	(391492)
23	03/21/2005	(391489)
24	04/22/2005	(428940)
25	04/25/2005	(428941)

26 07/21/2005 (428942)
 27 07/21/2005 (428943)
 28 07/21/2005 (428944)
 29 10/19/2005 (495058)
 30 10/19/2005 (495059)
 31 10/19/2005 (495060)
 32 01/19/2006 (495062)
 33 01/19/2006 (495063)
 34 01/19/2006 (495061)
 35 03/20/2006 (495057)
 36 04/17/2006 (507555)
 37 04/17/2006 (507556)
 38 07/24/2006 (529744)
 39 07/24/2006 (529745)
 40 07/24/2006 (529746)
 41 10/30/2006 (552677)
 42 10/30/2006 (552678)
 43 10/30/2006 (552679)
 44 01/29/2007 (552681)
 45 01/29/2007 (552682)
 46 01/29/2007 (552680)
 47 04/25/2007 (607042)
 48 04/25/2007 (607043)
 49 05/23/2007 (607044)
 50 08/24/2007 (607045)
 51 08/24/2007 (607046)
 52 08/24/2007 (607047)
 53 09/19/2007 (607048)
 54 11/01/2007 (635407)
 55 11/13/2007 (635408)
 56 12/18/2007 (635409)
 57 01/18/2008 (635410)
 58 03/24/2008 (609867)
 59 04/02/2008 (639616)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: **04/30/2005** (428942)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: **05/31/2006** (529745)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: **08/31/2006** (552678)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: **10/31/2006** (552680)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2007 (607044)
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2007 (607045)
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2007 (607047)
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2007 (635408)
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

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
TXI OPERATIONS, LP
RN105471445

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-0813-IWD-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 TXI Operations, LP ("the Respondent") under the authority of TEX. WATER CODE chs. 5, 7, and 26. 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 operates a ready-mixed concrete plant located at 3001 State Highway 121 South, Lewisville, Denton County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 December 10, 2007.
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 Three Thousand Five Hundred Sixty-Six Dollars (\$3,566) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Eight Hundred Fifty-Three Dollars

(\$2,853) of the administrative penalty and Seven Hundred Thirteen Dollars (\$713) 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 on July 1, 2008, the Respondent started monitoring for each parameter included in the permit.
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 Facility, the Respondent is alleged to have:

1. Failed to comply with permit effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110631, Part III, Permit Requirements, Section A, as documented by a TCEQ record review of self-reported data conducted on November 27, 2007, and as shown in the table below:

<i>EFFLUENT PARAMETER</i>		
<i>Permit Limit</i>		
	pH Maximum 9.0	Total Suspended Solids Daily Maximum Concentration 65 Milligrams per Liter
<i>Month/Year</i>		
Apr-07	9.5	c
May-07	9.7	c
Jul-07	10	94

c = compliant

2. Failed to monitor for each parameter included in the permit, in violation of 30 TEX. ADMIN. CODE § 319.4 and TPDES General Permit No. TXG110631, Part III, Permit Requirements, Section A, as documented by a record review conducted on November 27, 2007. Specifically, the Respondent did not analyze total suspended solids for the monitoring period ending June 30, 2007.
3. Failed to pay outstanding Above Ground Storage Tank fees for Account No. 0007328A for Fiscal Year 2008, in violation of 30 TEX. ADMIN. CODE § 21.4 and TEX. WATER CODE § 5.702, as documented during a record review conducted on May 15, 2008.

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: TXI Operations, LP, Docket No. 2008-0813-IWD-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 the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, pay all outstanding fees, including any associated penalties and interest and with the notation "TXI Operations, LP - Account No. 0007328A" to:

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

- b. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES General Permit No. TXG110631,

including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations; and

- c. Within 75 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 No. 2.a. and 2.b. 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:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. 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 Facility operations referenced in this Agreed Order.
4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be

made in writing to the Executive Director. Extensions are not effective until the Respondent 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 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.
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 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.

TXI Operations, LP
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Zaller
For the Executive Director

11/24/2008
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 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]
Signature

11/4/08
Date

James B. Rogers
Name (Printed or typed)
Authorized Representative of
TXI Operations, LP

VP Consumer Products
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.

