

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-1090-WQ-E **TCEQ ID:** RN101915148 **CASE NO.:** 36151
RESPONDENT NAME: Metroplex Quarry's 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 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: Metroplex Quarrys, 1405 Hess Road, Palo Pinto County</p> <p>TYPE OF OPERATION: Rock quarry</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 January 5, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Bart Barnett, Owner, Metroplex Quarry's Inc., 400 North Carroll Avenue, Southlake, Texas 76092 Mr. Randy O'Neal, Vice President, Metroplex Quarry's Inc., 400 North Carroll Avenue, Southlake, Texas 76092 Respondent's Attorney: Ms. Jean Flores, Attorney, Guida, Slavich & Flores, P.C., 750 North St. Paul Street, Suite 200, Dallas, Texas 75102</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: March 27, 2008</p> <p>Date of NOV/NOE Relating to this Case: June 17, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to maintain authorization to discharge storm water associated with industrial activity to water in the state located in a water quality protection area in the John Graves Scenic Riverway. Specifically, at the time of the file review, it was documented that the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05R238, which expired on November 13, 2006, and continued to operate a rock quarry without authorization [30 TEX. ADMIN. CODE § 311.82(a) and TEX. WATER CODE § 26.121(a)(2)].</p> | <p>Total Assessed: \$14,311</p> <p>Total Deferred: \$2,862 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$5,724</p> <p>Total Paid to General Revenue: \$5,725</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 submitted an administratively complete individual permit application on January 30, 2007.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, until such time as authorization to operate is obtained or until 365 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Multi-Sector General Permit No. TXR05R238;</p> <p>b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such request or by any other deadline specified in writing; and</p> <p>c. Within 380 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained or that all industrial activities subject to storm water authorization have ceased until such time that appropriate authorization is obtained.</p> |

Additional ID No(s): TXR05R238

Attachment A
Docket Number: 2008-1090-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|--------------------------------|--|
| Respondent: | Metroplex Quarry's Inc. |
| Payable Penalty Amount: | Eleven Thousand Four Hundred Forty-Nine Dollars (\$11,449) |
| SEP Amount: | Five Thousand Seven Hundred Twenty-Four Dollars (\$5,724) |
| Type of SEP: | Pre-approved |
| Third-Party Recipient: | Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up |
| Location of SEP: | Palo Pinto County |

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Office of Legal Services
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision April 29, 2008

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|------------|----------------|--|
| DATES | Assigned | 23-Jun-2008 | Screening | 3-Jul-2008 | EPA Due | |
| | PCW | 3-Oct-2008 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|-----------------------------|-------------------------|---------------------------|-------|
| Respondent | Metroplex Quarry's Inc. | | |
| Reg. Ent. Ref. No. | RN101915148 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|--|----------------|------------------------------|-------------------------|
| Enf./Case ID No. | 36151 | No. of Violations | 1 |
| Docket No. | 2008-1090-WQ-E | Order Type | 1660 |
| Media Program(s) | Water Quality | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Andrea Linson-Mgbeoduru |
| | | EC's Team | Enforcement Team 2 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

| | | |
|---|-------------------|-----------------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$20,000 |
|---|-------------------|-----------------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|-------------------|--------------------------------|----------------|
| Compliance History | 42.0% Enhancement | Subtotals 2, 3, & 7 | \$8,400 |
|---------------------------|-------------------|--------------------------------|----------------|

Notes
Enhancement due to six prior Notices of Violation ("NOV") with violations that are not same or similar as those in the current enforcement action and one agreed final court judgment containing a denial of liability.

| | | | | |
|--------------------|----|------------------|-------------------|------------|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------------------|-------------------|------------|

Notes
The Respondent does not meet the culpability criteria.

| | | |
|--|-------------------|------------|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|------------|

| | | | |
|-------------------------|-------------------|-------------------|------------|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|------------|

| | | |
|----------------------------|-------|-----------------------------------|
| Total EB Amounts | \$111 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$100 | |

| | | |
|-----------------------------|-----------------------|-----------------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$28,400 |
|-----------------------------|-----------------------|-----------------|

| | | | |
|---|--------|-------------------|------------------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | -49.6% | Adjustment | -\$14,089 |
|---|--------|-------------------|------------------|

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes
A 50% reduction from the final subtotal is recommended for self-reporting the violation. An enhancement of \$111 is recommended for the recovery of avoided costs.

| | |
|-----------------------------|-----------------|
| Final Penalty Amount | \$14,311 |
|-----------------------------|-----------------|

| | | |
|-----------------------------------|-------------------------------|-----------------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$14,311 |
|-----------------------------------|-------------------------------|-----------------|

| | | | |
|-----------------|-----------------|-------------------|-----------------|
| DEFERRAL | 20.0% Reduction | Adjustment | -\$2,862 |
|-----------------|-----------------|-------------------|-----------------|

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 | \$11,449 |
|------------------------|-----------------|

| | | | | |
|--------------------------------|-------------------------|---|----------------|------------|
| Screening Date | 3-Jul-2008 | Docket No. | 2008-1090-WQ-E | PCW |
| Respondent | Metroplex Quarry's Inc. | <i>Policy Revision 2 (September 2002)</i> | | |
| Case ID No. | 36151 | <i>PCW Revision April 29, 2008</i> | | |
| Reg. Ent. Reference No. | RN101915148 | | | |
| Media [Statute] | Water Quality | | | |
| Enf. Coordinator | Andrea Linson-Mgbeoduru | | | |

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) | 0 | 0% |
| | Other written NOVs | 6 | 12% |
| 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 judgements or consent decrees meeting criteria) | 1 | 30% |
| | 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% |
| 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) 42%

>> 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

Enhancement due to six prior Notices of Violation ("NOV") with violations that are not same or similar as those in the current enforcement action and one agreed final court judgment containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 42%

| | | | |
|--|---|---|---|
| Screening Date 3-Jul-2008 | Docket No. 2008-1090-WQ-E | PCW | |
| Respondent Metroplex Quarry's Inc. | <i>Policy Revision 2 (September 2002)</i> | | |
| Case ID No. 36151 | <i>PCW Revision April 29, 2008</i> | | |
| Reg. Ent. Reference No. RN101915148 | | | |
| Media [Statute] Water Quality | | | |
| Enf. Coordinator Andrea Linson-Mgbeoduru | | | |
| Violation Number <input type="text" value="1"/> | | | |
| Rule Cite(s) | <input type="text" value="30 Tex. Admin. Code § 311.82(a) and Tex. Water Code § 26.121(a)(2)"/> | | |
| Violation Description | <input 13,="" 2006="" a="" and="" authorization."="" continued="" expired="" general="" multi="" no.="" november="" on="" operate="" permit="" quarry="" rock="" sector="" to="" tpdes")="" txr05r238,="" type="text" value="Failed to maintain authorization to discharge storm water associated with industrial activity to water in the state located in a water quality protection area in the John Graves Scenic Riverway. Specifically, at the time of the file review, it was documented that the Respondent did not renew Texas Pollutant Discharge Elimination System (" which="" without=""/> | | |
| | Base Penalty | <input type="text" value="\$10,000"/> | |
| >> Environmental, Property and Human Health Matrix | | | |
| OR | Release | Harm | |
| | | Major Moderate Minor | |
| | Actual | <input type="text"/> | <input type="text"/> |
| Potential | <input type="text"/> | <input type="text"/> | |
| >> Programmatic Matrix | | | |
| | Falsification | Major Moderate Minor | |
| | <input type="text"/> | <input type="text" value="x"/> <input type="text"/> | Percent <input type="text" value="10%"/> |
| Matrix Notes | <input type="text" value="100% of the rule requirement was not met."/> | | |
| | Adjustment | <input type="text" value="\$9,000"/> | |
| | | | <input type="text" value="\$1,000"/> |
| Violation Events | | | |
| | Number of Violation Events <input type="text" value="20"/> | <input type="text" value="595"/> | Number of violation days |
| <i>mark only one with an x</i> | daily | <input type="text"/> | Violation Base Penalty <input type="text" value="\$20,000"/> |
| | monthly | <input type="text" value="x"/> | |
| | quarterly | <input type="text"/> | |
| | semiannual | <input type="text"/> | |
| | annual | <input type="text"/> | |
| | single event | <input type="text"/> | |
| <input type="text" value="Twenty monthly events are recommended from the deadline date to renew TPDES Multi-Sector General Permit TXR05R238, November 13, 2006, to the screening date of screening, July 3, 2008."/> | | | |
| Good Faith Efforts to Comply | | | Reduction <input type="text" value="0.0%"/> |
| | Before NOV | NOV to EDPRP/Settlement Offer | <input type="text" value="\$0"/> |
| Extraordinary | <input type="text"/> | <input type="text"/> | |
| Ordinary | <input type="text"/> | <input type="text"/> | |
| N/A | <input type="text" value="x"/> | (mark with x) | |
| Notes | <input type="text" value="The Respondent does not meet the good faith criteria for this violation, because they never had authorization to operate."/> | | |
| | | | Violation Subtotal <input type="text" value="\$20,000"/> |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | |
| Estimated EB Amount | <input type="text" value="\$111"/> | Violation Final Penalty Total | <input type="text" value="\$14,311"/> |
| This violation Final Assessed Penalty (adjusted for limits) | | | <input type="text" value="\$14,311"/> |

Economic Benefit Worksheet

Respondent Metroplex Quarry's Inc.
Case ID No. 36151
Reg. Ent. Reference No. RN101915148
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

| 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 | | | | 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] | \$100 | 13-Nov-2006 | 27-Mar-2008 | 2.29 | \$11 | \$100 | \$111 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

The avoided cost includes the amount necessary to renew the TPDES Multi-Sector General Permit by the deadline date to have authorization to continue to operate until an individual permit is issued. The date required was the deadline date for the renewal. The final date is the date of file review documenting the violaiton.

Approx. Cost of Compliance \$100

TOTAL \$111

Compliance History

| | | | |
|---|-------------------------------------|-------------------------|---------------------|
| Customer/Respondent/Owner-Operator: | CN602651978 Metroplex Quarry's Inc. | Classification: AVERAGE | Rating: 32.40 |
| Regulated Entity: | RN101915148 METROPLEX QUARRYS | Classification: AVERAGE | Site Rating: 32.40 |
| ID Number(s): | AIR QUALITY NON PERMITTED | ACCOUNT NUMBER | PA0098I |
| | AIR NEW SOURCE PERMITS | ACCOUNT NUMBER | PA0098I |
| | AIR NEW SOURCE PERMITS | PERMIT | 74370 |
| | PETROLEUM STORAGE TANK REGISTRATION | REGISTRATION | 76420 |
| | WASTEWATER | PERMIT | WQ0004820000 |
| | WASTEWATER | EPA ID | TX0129411 |
| Location: | 1405 HESS RD, PALO PINTO COUNTY, TX | Rating Date: 9/1/2007 | Repeat Violator: NO |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | |
| Date Compliance History Prepared: | June 24, 2008 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | June 23, 2003 to June 23, 2008 | | |

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

Name: Andrea Linson-Mgbeoduru Phone: 512-239-1482

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 |
| | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| | 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.

- Effective Date: 05/16/2005 COURTORDER
- Classification: Minor
- Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
- Rqmt Prov: TXR050000 PERMIT
- Description: Failure to prevent discharges of rock, sand, gravel, soils, fines, aggregate, and other similar material in or adjacent to waters in the State. The discharge caused or will cause a condition of pollution of the waters in the State.
- Classification: Minor
- Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
30 TAC Chapter 305, SubChapter F 305.125(1)
- Rqmt Prov: TXR050000 PERMIT
- Description: Failure to comply with the provisions of the General Permit. Defendant did not implement the BMPs set out in its SWPPP, did not include all activities in which it is engaged at the Facility in its narrative in the SWPPP, and did not list all materials at the Facility in the list of materials in the SWPPP.
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 281, SubChapter A 281.25(a)(4)
30 TAC Chapter 305, SubChapter F 305.125(1)
- Description: Failure to prevent a discharge of storm water in or adjacent to waters in the State. Defendant discharged storm water that caused or will cause a condition of pollution to waters in the State. Defendant also discharged storm water without BMPs installed and/or properly maintained.

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 05/29/2005 (614388)
2 01/04/2006 (436151)
3 08/01/2006 (614381)
4 11/30/2006 (519781)
5 06/17/2008 (654445)

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

Date: 07/01/2005 (380522)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 106, SubChapter W 106.512(1)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to register two reciprocating engines within ten days after commencement of construction as required by 30 TAC § 106.512(1).

Date: 07/28/2005 (401417)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT TXR050000 Part III.A.4(b) & III.A.5

Description: Failure to include tracking as an activity or a potential source of pollutants and to develop best management practices (BMPs) to minimize or prevent the discharge of sediment caused by tracking.

Date: 11/04/2005 (436151)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT TXR050000 Part III.A.5(g)

Description: Failure to conduct a periodic inspection during the 3rd quarter of 2004.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT TXR050000 Part III.A.7(c)

Description: Failure to include the date on the annual comprehensive compliance evaluation.

Date: 04/04/2006 (459522)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(G)

30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PERMIT 74370, General Condition 9

PERMIT 74370, Special Condition 4(A)

Description: Failure to install and maintain area-type water sprays at all aggregate stockpiles and active work areas as required by TCEQ Air Permit No. 74370, Special Condition 4(A).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(E)(i)

30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PERMIT 74370, General Condition 7

PERMIT 74370, Special Condition 6(B)

Description: Failure to maintain daily and annual production records as required by TCEQ Air Permit No. 74370, Special Condition 6(B).

Date: 04/04/2006 (459652)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.4

5C THC Chapter 382, SubChapter A 382.085(a)

5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to prevent nuisance conditions as required by 30 TAC § 101.4.

Date: 03/07/2007 (539456)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(G)

30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PERMIT 74370, General Condition 9

PERMIT 74370, Special Condition 4(A)

Description: Failure to install and maintain area-type water sprays at all aggregate stockpiles and active work areas as required by TCEQ Air Permit No. 74370, Special Condition 4(A).

| | | | |
|--------------|---|-----------------|----------|
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(E)(i) 30 TAC Chapter 116, SubChapter B 116.115(c) 5C THC Chapter 382, SubChapter A 382.085(b) | | |
| Rqmt Prov: | PERMIT 74370, General Condition 7 PERMIT 74370, Special Condition 6(B) | | |
| Description: | Failure to maintain daily and annual production records as required by TCEQ Air Permit No. 74370, Special Condition 6(B). | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 101, SubChapter A 101.4 5C THC Chapter 382, SubChapter A 382.085(a) 5C THC Chapter 382, SubChapter A 382.085(b) | | |
| Description: | Failure to prevent nuisance conditions as required by 30 TAC § 101.4. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c) 5C THC Chapter 382, SubChapter A 382.085(b) | | |
| Rqmt Prov: | PERMIT 74370, Special Condition 3 | | |
| Description: | Failure to prevent visible fugitive emission levels from the hammering operation, sawing operation, engine/generator, material transfer points, material storage, or stockpiles from leaving the property in excess of 30 seconds in duration in any six minute period. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c) 5C THC Chapter 382, SubChapter A 382.085(b) | | |
| Rqmt Prov: | PERMIT 74370, Special Condition 4(B) | | |
| Description: | Failure to maintain a functional water truck on site at all times and utilize the truck to spray all aggregate stockpiles, roads, and active work areas as necessary to control dust as required by TCEQ Air Permit No. 74370, Special Condition 4(B). | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 116, SubChapter B 116.115(c) 5C THC Chapter 382, SubChapter A 382.085(b) | | |
| Rqmt Prov: | PERMIT 74370, Special Condition 6(B) | | |
| Description: | Failure to record the daily road maintenance for dust control as required by TCEQ Air Permit No. 74370, Special Condition 6(B). | | |

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
METROPLEX QUARRY'S INC.
RN101915148

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1090-WQ-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 Metroplex Quarry's Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Jean Flores of the law firm of Guida, Slavich and Flores, P.C., appear before the Commission and together stipulate that:

1. The Respondent owns and operates a rock quarry at 1405 Hess Road in Palo Pinto County, Texas (the "Site").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of 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 self disclosed the alleged violation to the TCEQ on or about February 20, 2008. The Respondent received a Notice of Enforcement concerning the violation alleged in Section II ("Allegations") on or about June 22, 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 Fourteen Thousand Three Hundred Eleven Dollars (\$14,311) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Thousand Seven Hundred Twenty-Five Dollars (\$5,725) of the administrative penalty and Two Thousand Eight Hundred Sixty-Two Dollars (\$2,862) 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. Five Thousand Seven Hundred Twenty-Four Dollars (\$5,724) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP") as set forth in Attachment A.
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 submitted an administratively complete individual permit application on January 30, 2007.
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 Site, the Respondent is alleged to have failed to maintain authorization to discharge storm water associated with industrial activity to water in the state located in a water quality protection area in the John Graves Scenic Riverway, in violation of 30 TEX. ADMIN. CODE § 311.82(a) and TEX. WATER CODE § 26.121(a)(2), as documented in a self disclosure by the Respondent and during a file review conducted on March 27, 2008. Specifically, at the time of the file review, it was documented that the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit No. TXR05R238, which expired on November 13, 2006 and continued to operate a rock quarry without authorization.

III. DENIALS

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

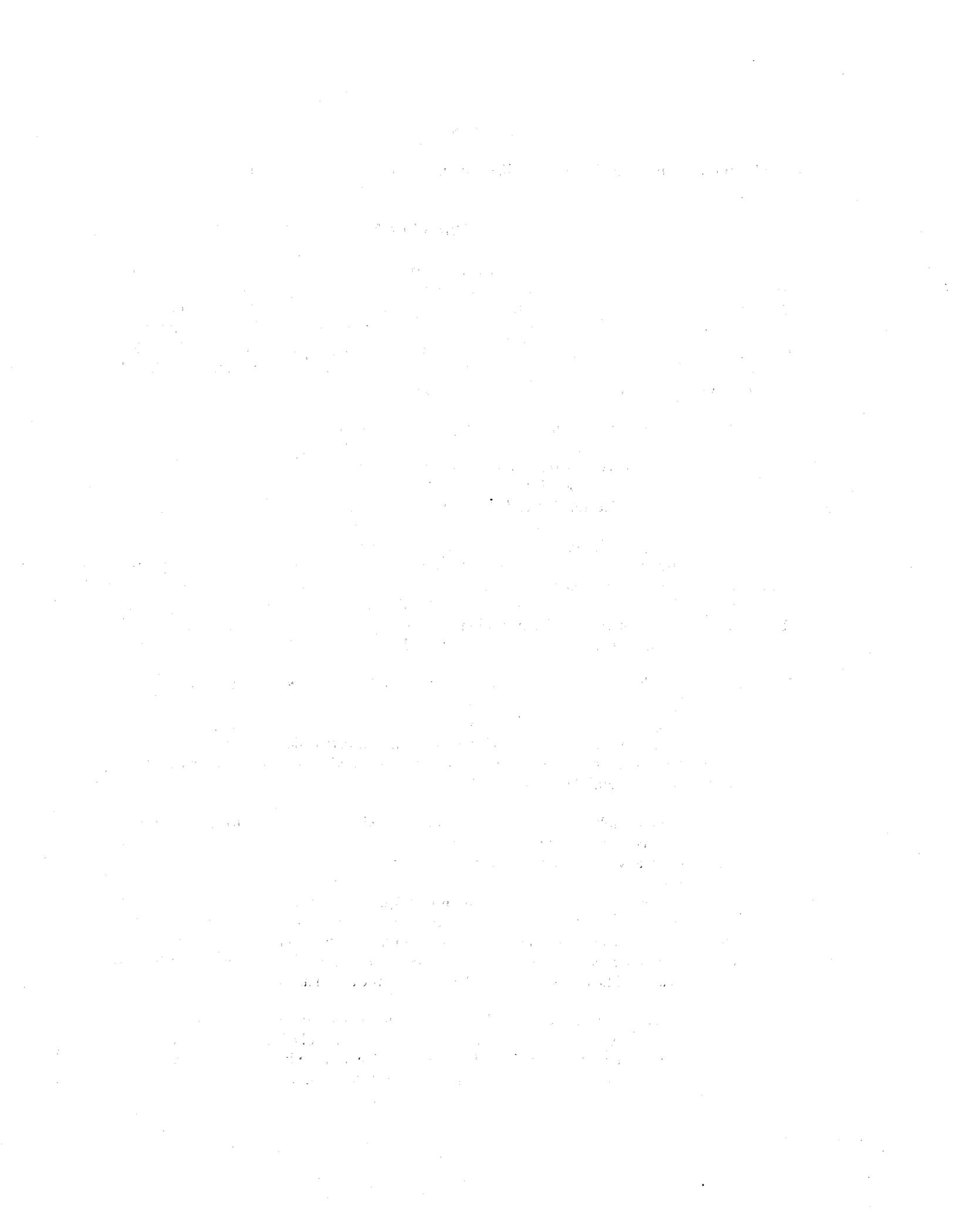
IV. ORDERING PROVISIONS

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 allegation 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: Metroplex Quarry's Inc., Docket No. 2008-1090-WQ-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Five Thousand Seven Hundred Twenty-Four Dollars (\$5,724) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, until such time as authorization to operate is obtained or until 365 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Multi-Sector General Permit No. TXR05R238.
 - b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such request or by any other deadline specified in writing.
 - c. Within 380 days after the effective date of this Agreed Order, submit written certification as described below that either authorization to operate has been obtained or that all industrial activities subject to storm water authorization have ceased until such time that appropriate authorization is obtained. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is



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

4. 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 Site operations referenced in this Agreed Order.
5. 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.
6. 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.
7. 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.
8. 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.

9. 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

John Sullivan
For the Executive Director

12/29/2008
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.

Randy O'Neal
Signature

11-18-08
Date

Randy O'Neal
Name (Printed or typed)
Authorized Representative of
Metroplex Quarry's Inc.

Vice 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.

Attachment A
Docket Number: 2008-1090-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Metroplex Quarry's Inc.
Payable Penalty Amount: Eleven Thousand Four Hundred Forty-Nine Dollars (\$11,449)
SEP Amount: Five Thousand Seven Hundred Twenty-Four Dollars (\$5,724)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up
Location of SEP: Palo Pinto County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Office of Legal Services
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

