

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1261-AIR-E **TCEQ ID:** RN102744166 and RN105472401 **CASE NO.:** 36312
RESPONDENT NAME: TexSand Distributors, 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: TexSand Distributors LP South Terminal, 2000 Main Street, Fort Worth, Tarrant County ("Plant 1") and Montane Logistics, 2301 Terminal Road, Fort Worth, Tarrant County ("Plant 2")</p> <p>TYPE OF OPERATION: Sand distribution plants</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on May 7, 2008, TexSand Distributors LP South Terminal, alleging that dust from the facility was creating a nuisance. There is no record of additional pending enforcement actions regarding these facility locations.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to prot this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 29, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Farrell Arceneaux, Managing Partner, TexSand Distributors, LP, 1220 North Main, Suite 200, Fort Worth, Texas 76164 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 checked="" 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: May 7, 2008</p> <p>Date of Investigation Relating to this Case: May 23 and June 16, 2008</p> <p>Date of NOV/NOE Relating to this Case: July 31 and August 26, 2008 (NOE)</p> <p>Background Facts: This case involved a routine and a complaint investigation.</p> <p>AIR</p> <p>1) Failure to prevent a nuisance condition. Specifically, during the investigation of June 16, 2008, dust emissions were observed leaving Plant 1 and migrating onto South Main Street [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].</p> <p>2) Failure to obtain permit authorization prior to operating. Specifically, the Respondent operated Plant 1 without a permit [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p> <p>3) Failure to obtain permit authorization prior to operating. Specifically, the Respondent operated Plant 2 without a permit [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p>Total Assessed: \$7,020</p> <p>Total Deferred: \$1,404 <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: \$5,616</p> <p>RN102744166 and RN105472401</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 paved the in-plant roads at Plant 1 on July 20, 2008 as a measure to eliminate future nuisance level dust emissions.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, submit administratively complete permit applications for the Plants;</p> <p>b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit applications for the Plants within 30 days after the date of such requests, or by any other deadline specified in writing; and</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained for the Plants. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance.</p>

Additional ID No(s): TA0101M

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision June 12, 2008

TCEQ	Assigned	4-Aug-2008			
	PCW	6-Aug-2008	Screening	5-Aug-2008	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	TexSand Distributors, LP	South Terminal	
Reg. Ent. Ref. No.	RN105472401		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36312	No. of Violations	2
Docket No.	2008-1261-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1
 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	9.0% Enhancement	Subtotals 2, 3, & 7	\$270
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Notes The Respondent was issued two NOV's with the same/similar type of violations and submitted one Notice of Intent.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$122	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$4,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,020
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$3,020
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,020
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DEFERRAL	20.0% Reduction	Adjustment	-\$604
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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	\$2,416
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Screening Date 5-Aug-2008

Docket No. 2008-1261-AIR-E

PCW

Respondent TexSand Distributors, LP

Policy Revision 2 (September 2002)

Case ID No. 36312

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105472401

Media [Statute] Air

Enf. Coordinator Jorge Ibarra, P.E.

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	2	10%
	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>	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 9%

>> **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 was issued two NOVs with the same/similar type of violations and submitted one Notice of Intent.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 9%

Screening Date 5-Aug-2008	Docket No. 2008-1261-AIR-E	PCW
Respondent TexSand Distributors, LP		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 36312		<i>PCW Revision June 12, 2008</i>
Reg. Ent. Reference No. RN105472401		
Media [Statute] Air		
Enf. Coordinator Jorge Ibarra, P.E.		

Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)
Violation Description	Failed to prevent a nuisance condition. Specifically, during the investigation of June 16, 2008, dust emissions were observed leaving the Plant and migrating onto South Main Street.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="10%"/>	
	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"/>

>> Programmatic Matrix

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

Matrix Notes Failure to control air contaminants from impacting off-site receptors resulted in the release of insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events **Number of violation days**

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction \$250

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

Notes The Respondent achieved compliance on July 20, 2008.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9 **Violation Final Penalty Total** \$840

This violation Final Assessed Penalty (adjusted for limits) \$840

Economic Benefit Worksheet

Respondent: TexSand Distributors, LP
Case ID No.: 36312
Reg. Ent. Reference No.: RN105472401
Media: Air
Violation No.: 1

South Terminal

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	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				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	16-Jun-2008	20-Jul-2008	0.09	\$9	n/a	\$9

Notes for DELAYED costs

Estimated cost to pave the in-plant roads. Date Required is the investigation date, Final Date is the compliance date.

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

\$9

Screening Date 5-Aug-2008	Docket No. 2008-1261-AIR-E	PCW
Respondent TexSand Distributors, LP		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 36312		<i>PCW Revision June 12, 2008</i>
Reg. Ent. Reference No. RN105472401		
Media [Statute] Air		
Enf. Coordinator Jorge Ibarra, P.E.		
Violation Number 2		
Rule Cite(s)	30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)	
Violation Description	Failed to obtain permit authorization prior to operating. Specifically, the Respondent operated the sand distribution plant without a permit.	
	Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="10%"/>

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="checkbox"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>

Violation Base Penalty \$2,000

Two monthly events are recommended based on the investigation date of June 16, 2008 to the screening date of August 5, 2008.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDRP/Settlement Offer \$0

Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total \$2,180

This violation Final Assessed Penalty (adjusted for limits) \$2,180

Economic Benefit Worksheet

Respondent TexSand Distributors, LP
Case ID No. 36312
Reg. Ent. Reference No. RN105472401
Media Air
Violation No. 2

South Terminal

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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	\$2,000	16-Jun-2008	1-Aug-2009	1.13	\$113	n/a	\$113
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit and obtain the required permit authorization. Date Required is the investigation date.
 Final Date is the expected compliance date.

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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$113

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision June 12, 2008

TCEQ	Assigned	18-Sep-2008			
DATES	PCW	19-Sep-2008	Screening	19-Sep-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	TexSand Distributors, LP Montane Logistics
Reg. Ent. Ref. No.	RN102744166
Facility/Site Region	4-Dallas/Fort Worth Major/Minor Source Minor

CASE INFORMATION			
Enf./Case ID No.	36312	No. of Violations	1
Docket No.	2008-1261-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1
 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change due to Average Performer classification.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$298	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$5,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$4,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,000
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DEFERRAL	20.0% Reduction	Adjustment	-\$800
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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	\$3,200
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Screening Date 19-Sep-2008

Docket No. 2008-1261-AIR-E

PCW

Respondent TexSand Distributors, LP

Policy Revision 2 (September 2002)

Case ID No. 36312

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102744166

Media [Statute] Air

Enf. Coordinator Jorge Ibarra, P.E.

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	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) 0%

>> **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

No change due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 19-Sep-2008	Docket No. 2008-1261-AIR-E	PCW
Respondent TexSand Distributors, LP		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 36312		<i>PCW Revision June 12, 2008</i>
Reg. Ent. Reference No. RN102744166		
Media [Statute] Air		
Enf. Coordinator Jorge Ibarra, P.E.		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)	
Violation Description	Failed to obtain permit authorization prior to operating. Specifically, the Respondent operated the sand distribution plant without a permit.	
	Base Penalty	<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
monthly	<input checked="" type="checkbox"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

mark only one with an x

Violation Base Penalty

Four monthly events are recommended based on the investigation date of May 23, 2008 to the screening date of September 19, 2008.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	

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 TexSand Distributors, LP
Case ID No. 36312
Reg. Ent. Reference No. RN102744166
Media Air
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
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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	\$5,000	23-May-2008	1-Aug-2009	1.19	\$298	n/a	\$298
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit and obtain the required permit authorization. Date Required is the date of the investigation. Final Date is the date compliance is expected to be achieved.

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

\$5,000

TOTAL

\$298

Compliance History

Customer/Respondent/Owner-Operator: CN603347931 TexSand Distributors, LP Classification: Rating:
Regulated Entity: RN105472401 TEXSAND DISTRIBUTORS LP SOUTH TERMINAL Classification: Average by Site Rating: 3.01 Default
ID Number(s):
Location: 2000 S MAIN ST, FORT WORTH, TX, 76110
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: August 05, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 05, 2003 to August 05, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period?
3. If Yes, who is the current owner? TexSand Distributors, LP
4. If Yes, who was/were the prior owner(s)? TexSand Silica, Ltd.
5. When did the change(s) in ownership occur? 4/23/2008

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. 05/13/2008 (638280)
2. 07/30/2008 (683684)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 05/13/2008 (638280)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THSC Chapter 382 382.085(a)
5C THSC Chapter 382 382.085(b)
Description: Nuisance level dust emissions.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)
5C THSC Chapter 382 382.0518(a)
5C THSC Chapter 382 382.085(b)
Description: Failure to obtain proper authorization for the facility.
Date: 07/30/2008 (683684)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)
5C THSC Chapter 382 382.0518(a)
5C THSC Chapter 382 382.085(b)
Description: Unauthorized unloading of malonitrile.

F. Environmental audits.

Notice of Intent Date: 04/22/2008 (671260)

No DOV Associated

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
TEXSAND DISTRIBUTORS, LP
RN105472401 AND RN102744166

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-1261-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 TexSand Distributors, 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 operates sand distribution plants at the following locations (the "Plants").
 - a. South Terminal: 2000 South Main Street, Fort Worth, Tarrant County, Texas ("Plant No. 1"); and
 - b. Montane Logistics: 2301 Terminal Road, Fort Worth, Tarrant County, Texas ("Plant No. 2").
2. The Plants 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 notices of the violations alleged in Section II ("Allegations") on or about August 4, 2008 and August 31, 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 Seven Thousand Twenty Dollars (\$7,020) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Thousand Six Hundred Sixteen Dollars (\$5,616) of the administrative penalty and One Thousand Four Hundred Four Dollars (\$1,404) 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 paved the in-plant roads at Plant 1 on July 20, 2008 as a measure to eliminate future nuisance level dust emissions.
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 Plants, the Respondent is alleged to have:

1. Failed to prevent a nuisance condition, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b), as documented during an investigation conducted on June 16, 2008. Specifically, during the investigation of June 16, 2008, dust emissions were observed leaving Plant No. 1 and migrating onto South Main Street.
2. Failed to obtain permit authorization prior to operating, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on June 16, 2008. Specifically, the Respondent operated Plant No. 1 without a permit.
3. Failed to obtain permit authorization prior to operating, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented

during an investigation conducted on May 23, 2008. Specifically, the Respondent operated Plant No. 2 without a permit.

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: TexSand Distributors, LP, Docket No. 2008-1261-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Agreed Order, submit administratively complete permit applications for the Plants, in accordance with 30 TEX. ADMIN. CODE § 116.110 to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit applications for the Plants within 30 days after the date of such requests, or by any other deadline specified in writing; and
 - c. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained for the Plants. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

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

and a copy to:

Air Program, Manager
City of Fort Worth Environmental Management Department
4200 South Freeway, Suite 552
Fort Worth, Texas 76115-1406

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 Plants' 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Miller
For the Executive Director

12/15/2008
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

10/3/2008
Date

Farrell Arceneaux
Name (Printed or typed)
Authorized Representative of
TexSand Distributors, LP

Managing Partner
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.

