

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1420-AIR-E TCEQ ID: RN105227037 CASE NO.: 34566
RESPONDENT NAME: ACCORD CONSTRUCTION, INC.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 410 West Trinity Boulevard, Grand Prairie, Dallas County

TYPE OF OPERATION: Portable rock crusher

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There is one complaint. The complaint alleged that there was an unauthorized rock crusher operating at the site. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on February 9, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
SEP Coordinator: Ms. Sharon Blue, Litigation Division, MC 175, (512) 239- 2223
TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Air Enforcement Section, MC 149, (512) 239-0321
TCEQ Regional Contact: Ms. Alyssa Taylor, DFW Regional Office, MC R-4, (817) 588-5828
Respondent: Mr. Paul Percifield, President, Accord Construction, Inc., 1700 Alma Drive, Suite 310, Plano, Texas 78075
Respondent's Attorney: Mr. Jeff Civins, Attorney, Haynes and Boone, LLP, 600 Congress Avenue, Suite 1300, Austin, Texas 78701

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: May 3, 2007</p> <p>Date of Investigation Relating to this Case: May 15, 2007</p> <p>Date of NOE Relating to this Case: August 22, 2007</p> <p>Background Facts: The case was referred to the Litigation Division on January 18, 2008. The Respondent signed an Agreed Order on December 5, 2008.</p> <p>Current Compliance Status: Respondent obtained authorization to operate on May 31, 2007.</p> <p>AIR: Failed to obtain authorization prior to constructing and operating a portable rock crusher [TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a)(1)].</p>	<p>Total Assessed: \$30,000</p> <p>Total Deferred: \$15,000 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$8,000/\$7,000</p> <p>The Respondent has paid \$8,000 of the administrative penalty. The remaining amount of the undeferred amount of \$7,000 of the administrative penalty shall be payable in 7 monthly payments of \$1,000 each. The remaining \$15,000 of the administrative penalty shall be offset by the completion of a Supplemental Environmental Project.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions: Within 30 days, the Respondent shall implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A).</p> <p>Corrective Action(s) Taken: The Executive Director recognizes that on March 6, 2007, Respondent ceased operations of the portable rock crusher at the Site. Furthermore, on May 31, 2007, Respondent obtained authorization to operate a portable rock crusher at the Site. Respondent did not restart operation of the portable rock crusher until authorized.</p>

Attachment A
Docket Number: 2007-1420-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Accord Construction, Inc.
Penalty Amount: Thirty thousand dollars (\$30,000)
SEP Offset Amount: Fifteen thousand dollars (\$15,000)
Type of SEP: Pre-approved
Third-Party Recipient: *Texas Congress of Parents and Teachers Association – Texas PTA Clean School Bus Program*
Location of SEP: Dallas 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 Offset 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 the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to *Texas Congress of Parents and Teachers Association – Texas PTA Clean School Bus Program* in Dallas County as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used to provide reimbursement to school districts throughout the State of Texas that retrofit or replace older diesel-engine school buses with newer model year buses or cleaner technology. This is an air pollution reduction program designed to impact ozone formation and directly impact the health of school children traveling on buses statewide. 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 it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

Passengers, drivers, and students in the area where school buses idle during transportation are subject to harmful diesel exhaust emission every school day. Apart from containing the ozone precursors NO_x and HC, as well as particulate matter (PM), diesel exhaust is known to cause or exacerbate a number of respiratory diseases, including asthma.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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 Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Texas Congress of Parents and Teachers Association (Texas PTA)
Suzy Swan, Director of Finance
408 W. 11th Street
Austin, Texas 78701

3. Records and Reporting

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

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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 a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	27-Aug-2007			
	PCW	13-Oct-2008	Screening	4-Sep-2007	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Accord Construction, Inc.				
Reg. Ent. Ref. No.	RN105227037				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	34566	No. of Violations	1		
Docket No.	2007-1420-AIR-E	Order Type	1660		
Media Program(s)	Air	Enf. Coordinator	Harvey Wilson		
Multi-Media		EC's Team	EnforcementTeam 3		
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$30,000
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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% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$0
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Notes: No enhancement is recommended.

Culpability	No	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% Reduction	<i>Subtotal 5</i>	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent achieved full compliance on May 31, 2007, by obtaining authorization to operate the portable rock crusher. No good faith penalty reduction is offered because this is a statutory penalty.

Total EB Amounts	\$1	0% Enhancement*	<i>Subtotal 6</i>	\$0
Approx. Cost of Compliance	\$500	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$30,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE		<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<i>Final Penalty Amount</i>	\$30,000
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$30,000
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DEFERRAL		Reduction	<i>Adjustment</i>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

The penalty is based on TEXAS WATER CODE § 7.052(b) which requires that the penalty for operating a rock crusher without the required permit is \$10,000 per day.

PAYABLE PENALTY	\$30,000
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Screening Date 4-Sep-2007	Docket No. 2007-1420-AIR-E	PCW
Respondent Accord Construction, Inc.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34566	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN105227037		
Media [Statute] Air		
Enf. Coordinator Harvey Wilson		

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%
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>> Compliance History Person Classification (Subtotal 7)

N/A	Adjustment Percentage (Subtotal 7) 0%
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>> Compliance History Summary

Compliance History Notes	No enhancement is recommended.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 4-Sep-2007	Docket No. 2007-1420-AIR-E	PCW
Respondent Accord Construction, Inc.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34566	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN105227037		
Media [Statute] Air		
Enf. Coordinator Harvey Wilson		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 116.110(a)(1), Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)	
Violation Description	Failed to obtain authorization prior to constructing and operating a portable rock crusher. Specifically, the rock crusher was relocated to 410 West Trinity Boulevard, Grand Prairie, Texas, without first securing a permit to operate at that location.	
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="text" value="x"/>	<input type="text"/>		<input type="text"/>
				Percent <input type="text" value="100%"/>	
Matrix Notes	The Respondent failed to meet 100% of the rule requirement. In accordance with TEXAS WATER CODE § 7.052(b), a rock crushing plant operating without a permit is penalized \$10,000 per day for each day that a continuing violation occurs.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Three daily events are recommended.

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 Accord Construction, Inc.
Case ID No. 34566
Reg. Ent. Reference No. RN105227037
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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	15-May-2007	31-May-2007	0.0	\$1	n/a	\$1

Notes for DELAYED costs

The estimated cost to obtain a permit to operate a rock crushing plant. Date Required is the date of the investigation when the violation was documented. Final Date is the date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator: CN603190117 Accord Construction, Inc. Classification: Rating:
Regulated Entity: RN105227037 ROCK CRUSHER SERIAL NO P032 Classification: Site Rating:
ID Number(s):
Location: 410 West Trinity Boulevard, Grand Prairie, Texas
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: August 31, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 31, 2002 to August 31, 2007
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Harvey Wilson Phone: 239-0321

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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.)
05/15/2007 564777
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
ACCORD CONSTRUCTION, INC.;
RN105227037

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§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1420-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the Accord Construction, Inc. ("Accord Construction") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Accord Construction, represented by Jeff Civins, of the law firm of Haynes and Boone, LLP, appear before the Commission and together stipulate that:

1. Accord Construction owns and operates a portable rock crusher located at 410 West Trinity Boulevard, Grand Prairie, Dallas County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Accord Construction agree that the Commission has jurisdiction to enter this Agreed Order, and that Accord Construction is subject to the Commission's jurisdiction.
4. Accord Construction received notice of the violations alleged in Section II ("Allegations") on or about August 27, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Accord Construction of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of thirty thousand dollars (\$30,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Accord Construction has paid eight thousand dollars (\$8,000.00) of the administrative penalty. Pursuant to TEX. WATER CODE § 7.067, fifteen thousand dollars (\$15,000.00) of the administrative penalty shall be conditionally offset by Accord Construction's completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. Accord Construction'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. The remaining amount of seven thousand dollars (\$7,000.00) of the administrative penalty shall be payable in seven (7) monthly payments of one thousand dollars (\$1,000.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Accord Construction fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Accord Construction's failure to meet the payment schedule of this Agreed Order constitutes the failure by Accord Construction to timely and satisfactorily comply with all of the terms of this Agreed Order
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Accord Construction 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 March 6, 2007, Accord Construction ceased operations of the portable rock crusher at the Site. Furthermore on May 31, 2007, Accord Construction obtained authorization under Air Quality Standard Permit – Tier II Rock Crusher to operate the portable rock crusher at the Site. Accord Construction did not restart operation of the portable rock crusher until authorized.
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 Accord Construction 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

During an investigation conducted on May 15, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Accord Construction violated TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a)(1) by failing to obtain authorization prior to constructing and operating a portable rock crusher. Specifically, Accord Construction relocated the rock crusher to 410 West Trinity Boulevard, Grand Prairie, Texas without first securing a permit to operate at that location. Accord Construction operated the portable rock crusher on March 2nd, March 5-6, 2007, without authorization.

III. DENIALS

Accord Construction generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Accord Construction pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Accord Construction's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here.
2. Accord Construction shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067 and as set forth in Section I, Paragraph 6, above. Fifteen thousand dollars (\$15,000.00) of the assessed administrative penalty shall be offset with the condition that Accord Construction implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. Accord Construction'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. The provisions of this Agreed Order shall apply to and be binding upon Accord Construction. Accord Construction 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.

4. If Accord Construction 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, Accord Construction's failure to comply is not a violation of this Agreed Order. Accord Construction shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Accord Construction shall notify the Executive Director within seven days after Accord Construction 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 Accord Construction shall be made in writing to the Executive Director. Extensions are not effective until Accord Construction 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 Accord Construction 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Accord Construction, or three days after the date on which the Commission mails notice of the Order to Accord Construction, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

11/9/09
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Accord Construction's compliance history;
- Greater scrutiny of any permit applications submitted by Accord Construction;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Accord Construction;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Accord Construction; and
- TCEQ seeking other relief as authorized by law.

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



Signature

Accord Construction, Inc
Paul Percifield

Name (Printed or typed)
Authorized representative of Accord Construction, Inc.

12-5-08

Date

PRESIDENT

Title

Attachment A
Supplemental Environmental Project

Attachment A
Docket Number: 2007-1420-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Accord Construction, Inc.
Penalty Amount: Thirty thousand dollars (\$30,000)
SEP Offset Amount: Fifteen thousand dollars (\$15,000)
Type of SEP: Pre-approved
Third-Party Recipient: **Texas Congress of Parents and Teachers Association – Texas
PTA Clean School Bus Program**
Location of SEP: Dallas 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 Offset 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 the SEP Offset Amount to the Third-Party Recipient named above.. The contribution will be to **Texas Congress of Parents and Teachers Association – Texas PTA Clean School Bus Program** in Dallas County as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used to provide reimbursement to school districts throughout the State of Texas that retrofit or replace older diesel-engine school buses with newer model year buses or cleaner technology. This is an air pollution reduction program designed to impact ozone formation and directly impact the health of school children traveling on buses statewide. 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 it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

Passengers, drivers, and students in the area where school buses idle during transportation are subject to harmful diesel exhaust emission every school day. Apart from containing the ozone precursors NOx and HC, as well as particulate matter (PM), diesel exhaust is known to cause or exacerbate a number of respiratory diseases, including asthma.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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 Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Texas Congress of Parents and Teachers Association (Texas PTA)
Suzy Swan, Director of Finance
408 W. 11th Street
Austin, Texas 78701

3. Records and Reporting

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

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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 a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.