

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1352-EAQ-E **TCEQ ID:** RN103991352 **CASE NO.:** 36417

RESPONDENT NAME: South Texas Aggregates, 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 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 checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Chapman Plant, located on the north side of State Highway 127, approximately 2,000 feet north of Ranch Road 1049, Uvalde 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 March 23, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lauren Smitherman, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-5223; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Clay Coleman, Vice President, South Texas Aggregates, Inc., 4343 East Main Street, Uvalde, Texas 78801 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 15, 2008</p> <p>Date of NOV/NOE Relating to this Case: July 22, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.5(a)(1)].</p> <p>2) Failure to obtain approval of an Aboveground Storage Tank ("AST") Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.5(a)(4)].</p>	<p>Total Assessed: \$36,400</p> <p>Total Deferred: \$7,280 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$1,120 (remaining \$28,000 due in 35 monthly payments of \$800 each)</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Immediately upon the effective date of this Agreed Order, cease all regulated activity until a WPAP has been approved by the TCEQ San Antonio Regional Office;</p> <p>b) Within 15 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a;</p> <p>c) Within 30 days after the effective date of this Agreed Order, submit administratively complete applications for approval of a WPAP and an AST Facility Plan;</p> <p>d) Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests or by any other deadline specified in writing; and</p> <p>e) Within 60 days after the effective date of this Agreed Order, submit written certification of compliance that approval for a WPAP and an AST Facility Plan has been obtained.</p>

Additional ID No(s): 0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	28-Jul-2008	Screening	29-Jul-2008	EPA Due	
	PCW	29-Jul-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	South Texas Aggregates, Inc.
Reg. Ent. Ref. No.	RN103991352
Facility/Site Region	13-San Antonio
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36417	No. of Violations	2
Docket No.	2008-1352-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lauren Smitherman
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$35,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 4.0% Enhancement *Subtotals 2, 3, & 7* **\$1,400**

Notes Enhancement due to two NOVs with unrelated violations.

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 \$1,112
Approx. Cost of Compliance \$20,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$36,400**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *Adjustment* **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$36,400**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$36,400**

DEFERRAL 20.0% Reduction *Adjustment* **-\$7,280**

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 **\$29,120**

Screening Date 29-Jul-2008

Docket No. 2008-1352-EAQ-E

PCW

Respondent South Texas Aggregates, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36417

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN103991352

Media [Statute] Edwards Aquifer

Enf. Coordinator Lauren Smitherman

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	2	4%
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)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

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) 4%

>> **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 two NOVs with unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 29-Jul-2008		Docket No. 2008-1352-EAQ-E		PCW	
Respondent South Texas Aggregates, Inc.		<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36417		<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN103991352					
Media [Statute] Edwards Aquifer					
Enf. Coordinator Lauren Smitherman					
Violation Number	<input type="text" value="1"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code §§ 213.4(a)(1) and 213.5(a)(1)"/>				
Violation Description	<input 15,="" 20="" 2008.="" a="" acres."="" activities="" activity="" an="" approximately="" aquifer="" area="" as="" beginning="" conducted="" documented="" during="" edwards="" investigation="" investigator="" may="" observed="" of="" on="" over="" prior="" quarry="" recharge="" regulated="" specifically,="" the="" to="" type="text" value="Failed to obtain approval of a Water Pollution Abatement Plan (" wpap")="" zone,=""/>				
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="25%"/>	
Matrix Notes	<input type="text" value="100% of the permit requirement was not met."/>				
Adjustment				<input type="text" value="\$7,500"/>	
				<input type="text" value="\$2,500"/>	
Violation Events					
Number of Violation Events		<input type="text" value="11"/>	Number of violation days <input type="text" value="75"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>			
	weekly	<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 <input type="text" value="\$27,500"/>	
<input type="text" value="Eleven weekly events are recommended based on the investigation date (May 15, 2008) to the screening date (July 29, 2008)."/>					
Good Faith Efforts to Comply		0.0% Reduction		<input type="text" value="\$0"/>	
		<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	<input checked="" type="text" value="x"/>	<input type="text"/>	<small>(mark with x)</small>		
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>				
Violation Subtotal				<input type="text" value="\$27,500"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$834"/>	Violation Final Penalty Total <input type="text" value="\$28,600"/>		
			This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$28,600"/>		

Economic Benefit Worksheet

Respondent: South Texas Aggregates, Inc.
Case ID No.: 36417
Reg. Ent. Reference No.: RN103991352
Media: Edwards Aquifer
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	\$15,000	15-May-2008	1-Mar-2009	0.79	\$40	\$795	\$834
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
 Estimated cost reflects the amount to perform an engineering site assessment (\$5,000) and a WPAP application fee (\$10,000). Date required is the investigation date. The final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$15,000	TOTAL	\$834
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Screening Date 29-Jul-2008	Docket No. 2008-1352-EAQ-E	PCW	
Respondent South Texas Aggregates, Inc.	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36417	<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN103991352			
Media [Statute] Edwards Aquifer			
Enf. Coordinator Lauren Smitherman			
Violation Number <input type="text" value="2"/>			
Rule Cite(s)	30 Tex. Admin. Code §§ 213.4(a)(1) and 213.5(a)(4)		
Violation Description	Failed to obtain approval of an Aboveground Storage Tank ("AST") Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on May 15, 2008. Specifically, the investigator observed seven aboveground storage tanks without an AST Facility Plan.		
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"/>
			Percent <input type="text" value="0%"/>
>> Programmatic Matrix			
	Falsification	Major	Moderate
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>
			<input type="text"/>
			Percent <input type="text" value="25%"/>
Matrix Notes	100% of the permit requirement was not met.		
			Adjustment <input type="text" value="\$7,500"/>
			<input type="text" value="\$2,500"/>
Violation Events			
	Number of Violation Events	<input type="text" value="3"/>	Number of violation days
		<input type="text" value="75"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	
	weekly	<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"/>	
			Violation Base Penalty <input type="text" value="\$7,500"/>
Three monthly events are recommended based on the investigation date (May 15, 2008) to the screening date (July 29, 2008).			
Good Faith Efforts to Comply			<input type="text" value="0.0%"/>
			Reduction <input type="text" value="\$0"/>
	Extraordinary	<input type="text"/>	
	Ordinary	<input type="text"/>	
	N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>
Notes	The Respondent does not meet the good faith criteria for this violation.		
			Violation Subtotal <input type="text" value="\$7,500"/>
Economic Benefit (EB) for this violation			Statutory Limit Test
	Estimated EB Amount	<input type="text" value="\$278"/>	Violation Final Penalty Total <input type="text" value="\$7,800"/>
			This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$7,800"/>

Economic Benefit Worksheet

Respondent South Texas Aggregates, Inc.
Case ID No. 36417
Reg. Ent. Reference No. RN103991352
Media Edwards Aquifer
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$5,000	15-May-2008	1-Mar-2009	0.79	\$13	\$265	\$278
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

Estimated cost reflects the amount to prepare, submit, and obtain approval of an AST Facility Plan for seven ASTs (\$650/tank). Date required is the investigation date. The final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$278

Compliance History

Customer/Respondent/Owner-Operator: CN601253529 South Texas Aggregates, Inc. Classification: AVERAGE Rating: 2.53
Regulated Entity: RN103991352 CHAPMAN PLANT Classification: AVERAGE Site Rating: 1.00
ID Number(s): STORMWATER PERMIT TXR05P450
Location: N SIDE OF HIGHWAY 127, APPRX 2,000 FT NORTH OF RR 1049, UVALDE CO, TX Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: August 14, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 14, 2003 to August 14, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lauren Smitherman Phone: 512-239-5223

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? Yes
3. If Yes, who is the current owner? South Texas Aggregates, Inc.
4. If Yes, who was/were the prior owner(s)?
5. When did the change(s) in ownership occur? 12/20/2006

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. (CEEDS Inv. Track. No.)

1	07/15/2004	(281698)
2	12/06/2004	(339732)
3	07/15/2008	(671017)
4	07/24/2008	(687277)

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

Date: 07/16/2004 (281698)

Self Report? NO

Classification: Moderate

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

Rqmt Prov: PERMIT TPDES MSGP Part III, Section A(5)(e)

Description: Failure to develop proper BMPs ie: sedimentation pond prior to waters entering a small intermittent creekbed.

Date: 07/16/2008 (671017)

Self Report? NO

Classification: Moderate

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

Description: Complete failure to maintain written records maintained of structural control maintenance and estimated volumes removed from storm water catch basins and sediment ponds? MSGP, Part III, Section A(5)(d); also MSGP, Part III, Section E(5)(e) regarding removal of sludge or other waste from storm water units.

Self Report? NO

Classification: Minor

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

Description: Failure to maintain records of employee training for all employees responsible for implementing or maintaining the activities in the SWP3 conducted at least annually and records of training activities maintained in the SWP3. MSGP, Part III, Section A(5)(f).

Self Report? NO Classification Minor
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Failure to provide current reports of inspections conducted quarterly by qualified individuals to determine the effectiveness of good housekeeping, spill prevention and response, erosion control, maintenance program for structural controls, BMPs, and Employee training, and are the inspections documented using a written checklist. MSGP, Part III, Section A(5)(g).

Self Report? NO Classification Minor
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Quarterly Visual Monitoring- Failure to provide copies of monitoring of each outfall being performed each quarter during daylight and operation hours, and are samples being examined in a well lit area for color, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and odor. MSGP, Part III, Section A(5)(h).

Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Failure to maintain rain gauge on-site or utilized in the immediate vicinity of the site to determine when a representative storm event occurs. MSGP, Part III, Section C(1)(c).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SOUTH TEXAS AGGREGATES, INC.
RN103991352

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1352-EAQ-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 South Texas Aggregates, 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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a rock quarry located on the north side of State Highway 127, approximately 2,000 feet north of Ranch Road 1049, Uvalde County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 27, 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 Thirty-Six Thousand Four Hundred Dollars (\$36,400) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand One Hundred Twenty Dollars (\$1,120) of the administrative penalty and Seven Thousand Two Hundred Eighty Dollars (\$7,280) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Twenty-Eight Thousand Dollars (\$28,000) of the administrative penalty shall be payable in 35 monthly payments of Eight Hundred Dollars (\$800) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all 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 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 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.
10. 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.
11. 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:

1. Failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.5(a)(1), as documented during an investigation conducted on May 15, 2008. Specifically, the investigator observed quarry activities on an area of approximately 20 acres.

2. Failed to obtain approval of an Aboveground Storage Tank ("AST") Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.5(a)(4), as documented during an investigation conducted on May 15, 2008. Specifically, the investigator observed seven ASTs without an AST Facility Plan.

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: South Texas Aggregates, Inc., Docket No. 2008-1352-EAQ-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. Immediately upon the effective date of this Agreed Order, cease all regulated activity until a WPAP has been approved by the TCEQ San Antonio Regional Office;
 - b. Within 15 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 2.a, in accordance with Ordering Provision 2.f below;
 - c. Within 30 days after the effective date of this Agreed Order, submit administratively complete applications for approval of a WPAP and an AST Facility Plan, in accordance with 30 TEX. ADMIN. CODE §§ 213.4 and 213.5;
 - d. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests or by any other deadline specified in writing;
 - e. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance that approval for a WPAP and an AST Facility Plan has been obtained, in accordance with Ordering Provision 2.f below; and

- f. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. 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
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

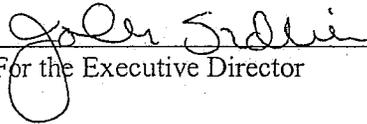
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of 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



For the Executive Director

2/27/2009
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

1-15-09
Date

Clay Coleman

Name (Printed or typed)
Authorized Representative of
South Texas Aggregates, 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.