

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1570-AIR-E **TCEQ ID:** RN105497176 **CASE NO.:** 36614

RESPONDENT NAME: Flat Rock Minerals, LLC

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: Rock Crusher Plant No. 1 and 2, located on Farm-to-Market Road 2796, 3.2 miles west of the intersection of Farm-to-Market Road 2796 and Farm-to-Market Road 557, Upshur County</p> <p>TYPE OF OPERATION: Rock crushing plant</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on July 21, 2008, alleging a nuisance dust condition. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 4, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, MC R-13, (210) 403-4006; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Trace Shappell, President, Flat Rock Minerals, LLC, P.O. Box 2967, Longview, Texas 75606-2967 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 type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: July 31, 2008</p> <p>Date of Investigation Relating to this Case: July 31, 2008</p> <p>Date of NOV/NOE Relating to this Case: September 12, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>1) Failure to notify the TCEQ of a change to facilities. Specifically, when the rock crusher authorized by Permit No. 84664L001 was down for maintenance, a crusher authorized by the TCEQ Tyler Regional Office via letter dated April 9, 2008, for another site, was moved to replace the inoperable crusher, but without notification to the TCEQ of the replacement [30 TEX. ADMIN. CODE § 116.115(c), New Source Review ("NSR") Permit No. 84664L001, Special Condition 1, 30 TEX. ADMIN. CODE § 116.116(c)(3), and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to properly maintain the water spray system on the rock crusher. During the investigation, it was noted that the system was not connected to a water source [30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 84664L001, Special Condition 6.B., and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failure to spray all in-plant roads and traffic areas, active work areas, and aggregate stockpiles with water and/or environmentally sensitive chemicals [30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 84664L001, Special Condition 6.C., and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$3,470</p> <p>Total Deferred: \$694 <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: \$2,776</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 has implemented the following corrective measures at the Plant:</p> <p>a. Submitted a letter on August 7, 2008 explaining that the second rock crusher; which was operated prior to notifying the TCEQ of the facility change, was no longer being used;</p> <p>b. Added a pump and tank to the crusher spray bar system and obtained a temporary water use permit for water to service the Plant, which was confirmed by a TCEQ investigation conducted on December 11, 2008;</p> <p>c. Began spraying all in-plant roads and traffic areas, active work areas, and aggregate stockpiles with water and/or environmentally sensitive chemicals, which was confirmed by a TCEQ investigation conducted on December 11, 2008; and</p> <p>d. Began keeping required records of screen production, dust control, and engine fuel usage, which was confirmed by a TCEQ investigation conducted on December 11, 2008.</p>

<p>4) Failure to maintain records of screen production, dust control, and engine fuel usage. Specifically, no records were available during the investigation, and the records later mailed to TCEQ were deficient of these aforementioned records [30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 84664L001, Special Conditions 11.A., C., and D., General Condition 7, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>5) Failure to have authorization for a second shaker screen. The permit authorizes one screen to be utilized at the Plant, but operating records show that on 14 days between July 16, 2008 and July 31, 2008, there was a second screen being utilized [30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 84664L001, Special Condition 1, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		
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Additional ID No(s): 84664L001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	15-Sep-2008	Screening	30-Sep-2008	EPA Due	
	PCW	3-Feb-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Flat Rock Minerals, LLC
Reg. Ent. Ref. No.	RN105497176
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36614	No. of Violations	5
Docket No.	2008-1570-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Trina Grieco
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$53	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,050	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 30-Sep-2008

Docket No. 2008-1570-AIR-E

PCW

Respondent Flat Rock Minerals, LLC

Policy Revision 2 (September 2002)

Case ID No. 36614

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105497176

Media [Statute] Air

Enf. Coordinator Trina Grieco

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	1	2%
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%

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) 2%

>> 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

Penalty enhancement due to one NOV issued for dissimilar violations than those in this case.

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

Screening Date 30-Sep-2008	Docket No. 2008-1570-AIR-E	PCW		
Respondent Flat Rock Minerals, LLC		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36614		<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN105497176				
Media [Statute] Air				
Enf. Coordinator Trina Grieco				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	30 Tex. Admin. Code § 116.115(c), New Source Review ("NSR") Permit No. 84664L001, Special Condition 1, 30 Tex. Admin. Code § 116.116(c)(3), and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to notify the TCEQ of a change to facilities. Specifically, when the rock crusher authorized by Permit No. 84664L001 was down for maintenance, a crusher authorized by the TCEQ Tyler Regional Office via letter dated April 9, 2008 for another site, was moved to replace the inoperable crusher, but without notification to the TCEQ of the replacement.			
	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"/>	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.			
	Adjustment	<input type="text" value="\$9,000"/>		
				<input type="text" value="\$1,000"/>
Violation Events				
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="1"/>
<small>mark only one with an x</small>	daily	<input 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="\$1,000"/>
One daily event is recommended.				
Good Faith Efforts to Comply				
	<input type="text" value="10.0%"/>	Reduction		<input type="text" value="\$100"/>
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	x	
N/A	<input type="text"/>	(mark with x)		
Notes	The Respondent completed corrective actions by November 10, 2008, the date the permit amendment was issued.			
		Violation Subtotal	<input type="text" value="\$900"/>	
Economic Benefit (EB) for this violation				
	Estimated EB Amount	<input type="text" value="\$16"/>	Statutory Limit Test	
			Violation Final Penalty Total	<input type="text" value="\$920"/>
			This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$920"/>

Economic Benefit Worksheet

Respondent Flat Rock Minerals, LLC
Case ID No. 36614
Reg. Ent. Reference No. RN105497176
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	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	\$1,000	16-Jul-2008	10-Nov-2008	0.32	\$16	n/a	\$16
Other (as needed)	\$50	16-Jul-2008	7-Aug-2008	0.06	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost (\$50) to cease using the second crusher and notifying the TCEQ of its non-operational status and the estimated cost (\$1,000) to obtain a permit amendment. The dates required are the dates the second crusher was operated. The final date is the date corrective actions were completed (notification to TCEQ and permit amendment issued).

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

	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 \$1,050

TOTAL \$16

Screening Date 30-Sep-2008	Docket No. 2008-1570-AIR-E	PCW	
Respondent Flat Rock Minerals, LLC	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36614	<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN105497176			
Media [Statute] Air			
Enf. Coordinator Trina Grieco			
Violation Number <input type="text" value="2"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 116.115(c), NSR Permit No. 84664L001, Special Condition 6.B. and Tex. Health & Safety Code § 382.085(b)"/>		
Violation Description	<input type="text" value="Failed to properly maintain the water spray system on the rock crusher. During the investigation, it was noted that the system was not connected to a water source."/>		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
	Actual <input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential <input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>
			Percent <input type="text" value="5%"/>
>> Programmatic Matrix			
	Falsification	Major	Moderate
	<input type="text"/>	<input type="text"/>	<input type="text"/>
			Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment could have been exposed to insignificant amounts of pollutants which would not have exceeded levels that are protective of human health or environmental receptors as a result of the violation."/>		
Adjustment		<input type="text" value="\$9,500"/>	
		<input type="text" value="\$500"/>	
Violation Events			
	Number of Violation Events <input type="text" value="1"/>	<input type="text" value="1"/>	Number of violation days
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$500"/>
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input checked="" type="text" value="x"/>	
<input type="text" value="One single event is recommended."/>			
Good Faith Efforts to Comply			
		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>
		<small>Before NOV 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"/>	<small>(mark with x)</small>	
Notes	<input type="text" value="The Respondent returned to compliance on December 11, 2008, which was after the initial settlement offer that was mailed on December 3, 2008."/>		
Violation Subtotal		<input type="text" value="\$500"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$9"/>	Violation Final Penalty Total	<input type="text" value="\$510"/>
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$510"/>	

Economic Benefit Worksheet

Respondent Flat Rock Minerals, LLC
Case ID No. 36614
Reg. Ent. Reference No. RN105497176
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)	\$500	31-Jul-2008	11-Dec-2008	0.36	\$9	\$9

Notes for DELAYED costs

Estimated cost to attach the water spray system to a water source. The date required is the date of the investigation. The final date is the date corrective actions were completed.

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

\$500

TOTAL

\$9

Screening Date 30-Sep-2008 **Docket No.** 2008-1570-AIR-E **PCW**
Respondent Flat Rock Minerals, LLC *Policy Revision 2 (September 2002)*
Case ID No. 36614 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN105497176
Media [Statute] Air
Enf. Coordinator Trina Grieco
Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	

>> Programmatic Matrix

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

Matrix Notes:

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

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="text" value="x"/>	(mark with x)

Notes:

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 Flat Rock Minerals, LLC
Case ID No. 36614
Reg. Ent. Reference No. RN105497176
Media Air
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	31-Jul-2008	11-Dec-2008	0.36	\$9	n/a	\$9

Notes for DELAYED costs
 Estimated cost to implement measures designed to ensure that in-plant roads and traffic areas, active work areas, and aggregate stockpiles are sprayed with water and/or environmentally sensitive chemicals. The date required is the date of the investigation. The final date is the date corrective actions were completed.

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 \$500

TOTAL \$9

<p>Screening Date 30-Sep-2008</p> <p>Respondent Flat Rock Minerals, LLC</p> <p>Case ID No. 36614</p> <p>Reg. Ent. Reference No. RN105497176</p> <p>Media [Statute] Air</p> <p>Enf. Coordinator Trina Grieco</p> <p>Violation Number <input type="text" value="4"/></p> <p>Rule Cite(s)</p>	<p>Docket No. 2008-1570-AIR-E</p> <p style="text-align: right;">PCW <small>Policy Revision 2 (September 2002) PCW Revision June 12, 2008</small></p>																										
<p>Violation Description</p> <div style="border: 1px solid black; padding: 5px;"> <p>30 Tex. Admin. Code § 116.115(c), NSR Permit No. 84664L001, Special Conditions 11.A., C., and D., General Condition 7, and Tex. Health & Safety Code § 382.085(b)</p> <p>Failed to maintain records of screen production, dust control, engine fuel usage. Specifically, no records were available during the investigation, and the records later mailed to TCEQ were deficient of these aforementioned records.</p> </div>																											
<p>Base Penalty <input type="text" value="\$10,000"/></p>																											
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Economic Benefit Worksheet

Respondent Flat Rock Minerals, LLC
Case ID No. 36614
Reg. Ent. Reference No. RN105497176
Media Air
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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	\$1,000	31-Jul-2008	11-Dec-2008	0.36	\$18	n/a	\$18
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 to develop and maintain a recordkeeping system to include records of screen production, dust control, engine fuel usage, repair and maintenance of abatement systems, and inspections of capture systems and abatement devices. The date required is the date of the investigation. The final date is the date corrective actions were completed.

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

\$1,000

TOTAL

\$18

<p>Screening Date 30-Sep-2008</p> <p>Respondent Flat Rock Minerals, LLC</p> <p>Case ID No. 36614</p> <p>Reg. Ent. Reference No. RN105497176</p> <p>Media [Statute] Air</p> <p>Enf. Coordinator Trina Grieco</p> <p>Violation Number <input type="text" value="5"/></p> <p>Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), NSR Permit No. 84664L001, Special Condition 1 and Tex. Health & Safety Code § 382.085(b)</p> <p>Violation Description Failed to have authorization for a second shaker screen. The permit authorizes one screen to be utilized at the Plant, but operating records show that on 14 days between July 16, 2008 and July 31, 2008, there was a second screen being utilized.</p>	<p>Docket No. 2008-1570-AIR-E</p> <p>PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 12, 2008</i></p>																			
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Ordinary	<input type="text"/>	<input type="text"/>																		
N/A	x	(mark with x)																		
Violation Subtotal <input type="text" value="\$1,000"/>																				
Economic Benefit (EB) for this violation																				
Estimated EB Amount <input type="text" value="\$0"/>	Statutory Limit Test																			
Violation Final Penalty Total <input type="text" value="\$1,020"/>																				
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,020"/>																				

Economic Benefit Worksheet

Respondent Flat Rock Minerals, LLC
Case ID No. 36614
Reg. Ent. Reference No. RN105497176
Media Air
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit ("EB") for this violation is captured in the EB calculated for Violation 1.

Avoided Costs

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

	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 \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator: CN603344581 FLAT ROCK MINERALS, LLC Classification: AVERAGE Rating: 2.25
Regulated Entity: RN105497176 ROCK CRUSHER PLANT NO 1 AND 2 Classification: AVERAGE Site Rating: 1.50

ID Number(s): STORMWATER PERMIT TXR05X737
AIR NEW SOURCE PERMITS PERMIT 84664L001

Location: ON FM 2796, 3.2 MI WEST OF THE INTERSECTION OF FM 2796 AND FM 557 Rating Date: 9/1/2008 Repeat Violator: NO

TCEQ Region: REGION 05 – TYLER

Date Compliance History Prepared: September 25, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 25, 2003 to September 25, 2008

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Trina Grieco Phone: (210) 403-4006

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 09/12/2008 | (702502) |
| 2 | 09/09/2008 | (688931) |
| 3 | 09/09/2008 | (687226) |
| 4 | 08/22/2008 | (700177) |
| 5 | 07/18/2008 | (685837) |
| 6 | 06/30/2008 | (615412) |
| 7 | 06/03/2008 | (681530) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/06/2008 (681530)
Self Report? NO

Classification: Moderate

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

Description: Failure to obtain a storm water multi-sector general permit (MSGP) prior to beginning mining operations.

Mr. Smith contacted Mr. Shappell on April 9, 2008, via the telephone to discuss the mining operation. Mr. Shappell stated they were unaware a storm water permit was required and confirmed the site did not have a permit.

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
FLAT ROCK MINERALS, LLC
RN105497176

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1570-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 Flat Rock Minerals, LLC ("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 a rock crushing plant on Farm-to-Market Road 2796, 3.2 miles west of the intersection of Farm-to-Market Road 2796 and Farm-to-Market Road 557 in Upshur County, Texas (the "Plant").
2. The Plant 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 notice of the violations alleged in Section II ("Allegations") on or about September 17, 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 Three Thousand Four Hundred Seventy Dollars (\$3,470) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Seven Hundred Seventy-Six Dollars

(\$2,776) of the administrative penalty and Six Hundred Ninety-Four Dollars (\$694) 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 has implemented the following corrective measures at the Plant:
 - a. Submitted a letter on August 7, 2008 explaining that the second rock crusher, which was operated prior to notifying the TCEQ of the facility change, was no longer being used;
 - b. Added a pump and tank to the crusher spray bar system and obtained a temporary water use permit for water to service the Plant, which was confirmed by a TCEQ investigation conducted on December 11, 2008;
 - c. Began spraying all in-plant roads and traffic areas, active work areas, and aggregate stockpiles with water and/or environmentally sensitive chemicals, which was confirmed by a TCEQ investigation conducted on December 11, 2008; and
 - d. Began keeping required records of screen production, dust control, and engine fuel usage, which was confirmed by a TCEQ investigation conducted on December 11, 2008.
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 Plant, the Respondent is alleged to have:

1. Failed to notify the TCEQ of a change to facilities, in violation of 30 TEX. ADMIN. CODE § 116.115(c), New Source Review ("NSR") Permit No. 84664L001, Special Condition 1, 30 TEX. ADMIN. CODE § 116.116(c)(3), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 31, 2008. Specifically, when the rock crusher authorized by Permit No. 84664L001 was down for maintenance, a crusher authorized by the TCEQ Tyler Regional Office via letter dated April 9, 2008, for another site, was moved to replace the inoperable crusher, but without notification to the TCEQ of the replacement.
2. Failed to properly maintain the water spray system on the rock crusher, in violation of 30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 84664L001, Special Condition 6.B. and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 31, 2008. During the investigation, it was noted that the system was not connected to a water source.
3. Failed to spray all in-plant roads and traffic areas, active work areas, and aggregate stockpiles with water and/or environmentally sensitive chemicals, in violation of 30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 84664L001, Special Condition 6.C. and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 31, 2008.
4. Failed to maintain records of screen production, dust control, and engine fuel usage, in violation of 30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 84664L001, Special Conditions 11.A., C., and D., General Condition 7, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 31, 2008. Specifically, no records were available during the investigation, and the records later mailed to TCEQ were deficient of these aforementioned records.
5. Failed to have authorization for a second shaker screen, in violation of 30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 84664L001, Special Condition 1 and TEX. HEALTH & SAFETY CODE § 382.085(b). The permit authorizes one screen to be utilized at the Plant, but operating records show that on 14 days between July 16, 2008 and July 31, 2008, there was a second screen being utilized.

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: Flat Rock Minerals, LLC, Docket No. 2008-1570-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. 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 Plant operations referenced in this Agreed Order.
3. 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.
4. 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.
5. 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

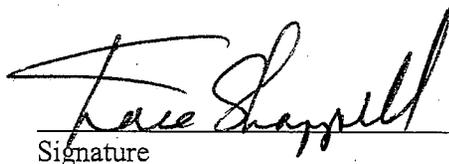
4/2/2009
Date

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

3-6-2009
Date

Trace Shappell

Name (Printed or typed)
Authorized Representative of
Flat Rock Minerals, LLC

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.

