

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2005-0897-AIR-E TCEQ ID: RN103045340 CASE NO.: 25508**  
**RESPONDENT NAME: J.C. EVANS CONSTRUCTION COMPANY, INC.**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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

**SITE WHERE VIOLATION(S) OCCURRED:** County Road 239, near Georgetown, Williamson County

**TYPE OF OPERATION:** Rock crusher

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that dust was emanating from a nearby stone quarry. There is no record of additional pending enforcement actions regarding this facility location.

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired June 22, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

- TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ SEP Coordinator: Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2333
- TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, Air Enforcement Section, MC R-4, (817) 588-5990
- TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 339-2929
- Respondent: Mr. Blake Kuhlman, President, J.C. Evans Construction Co., Inc., P.O. Box 1216, Leander, Texas 78646-1216
- Respondent's Attorney: Ms. Molly Cagle, Vinson & Elkins, LLP, 2801 Via Fortuna, Suite 100, Austin, Texas 78746

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      February 24, 2005</p> <p><b>Date of Investigation Relating to this Case:</b>                      March 22, 2005</p> <p><b>Date of NOE Relating to this Case:</b>                      May 3, 2005</p> <p><b>Background Facts:</b>                      The EDRP was filed November 3, 2005. The Respondent filed an answer and the case was referred to SOAH. The agreed order was signed May 8, 2009.</p> <p><b>Current Compliance Status:</b>                      No outstanding Technical Requirements.</p> <p><b>AIR:</b>                      Failed to obtain authorization or satisfy the conditions of a permit by rule (PBR) to operate an existing facility (rock crusher) [30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH &amp; SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p><b>Initial Calculated Penalty:</b> \$ 210,000</p> <p><b>Total Assessed:</b> \$210,000</p> <p><b>Total Deferred:</b> \$168,000  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$42,000</p> <p>The Respondent paid \$42,000 of the administrative penalty. The remaining amount of \$168,000 shall be conditionally offset by the completion of a Supplemental Environmental Project (SEP).</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that Respondent ceased operation of the rock crusher on March 22, 2005, in response to the enforcement action.</p> <p><b>Ordering Provision:</b></p> <p>The Respondent shall implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A – Air Pollution Reduction paving project, and Cleanup of Unauthorized Dumps).</p>

Attachment A  
Docket Number: 2005-0897-AIR-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

Respondent:	J.C. Evans Construction Company, Inc.
Penalty Amount:	Two hundred ten thousand dollars (\$210,000)
SEP Offset Amount:	Up to One hundred sixty-eight thousand dollars (\$168,000)
Type of SEP:	Custom and Pre-approved (2 SEPs)
Type of SEP - <b>Project One</b> :	Custom
Location of SEP:	Harris County
Type of SEP - <b>Project Two</b> :	Contribution to Third-party Administrator
Third-Party Recipient:	<b>Texas Association of Resource Conservation &amp; Development Areas, Inc. (RC&amp;D)</b> – <i>Cleanup of Unauthorized Dumpsites</i>
Location of SEP:	Williamson 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 perform and 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 and/or completion of the contribution in accordance with the terms of this Attachment A.

**1. Project Description**

A. 1. Project One

The Respondent shall perform an air pollution reduction project involving paving (with non-asphalt base materials) unpaved parking and driving areas at 9601 Clinton Drive in Houston, Texas. The subject site is a 0.773 acre commercial tract located at the northeast corner of Clinton Drive and Clinton Park Avenue in the Galena Park area of Houston. The legal description is: Business Tract “C”, of CLINTON PARK ADDITION, a subdivision in the John Brown Survey, Abstract No. 8, in Houston, Harris County, Texas, according to the map or plat thereof, recorded in Volume 18, Pages 28, 29 and 30 of the Map Records of Harris County, Texas.

The site is defined by four distinct areas:

1. Area 1 is the 8,025 sq. ft. area within the public right-of-way between the eastern edge of Clinton Park Avenue pavement and the eastern right-of-way line adjacent to the grocery store.
2. Area 2 is 8,415 sq. ft. area comprising the concrete driveway and parking area between the grocery store and the Clinton Drive right-of-way.
3. Area 3 is the 4,015 sq. ft. area in front of the seafood restaurant between the building and the Clinton Drive right-of-way.
4. Area 4 is the 5,263 sq. ft. area of dirt and asphalt driveway to the site from Clinton Drive within the Clinton Drive right-of-way.

The Respondent shall provide site specific engineer work, obtain permits, provide excavation and disposal of dirt, asphalt and concrete from areas 1, 3 & 4, perform site preparation, and install 6" concrete pavement in those same areas as shown in the scope of work approved by TCEQ.

The Respondent certifies that it has no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action. The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations.

A. 2. Project Two

The Respondent shall contribute any remaining unspent portion of the SEP Offset Amount for Project One to the Third-Party Recipient named above. The contribution will be to **Texas Association of Resource Conservation & Development Areas, Inc. (RC&D)** for *Cleanup of Unauthorized Dumpsites* as set forth in an agreement between the Third-Party Recipient and the TCEQ. The SEP Offset Amount will pay for the labor and disposal costs associated with proper clean up and disposal of wastes, debris, or abandoned tires.

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. The project will be administered in accordance with federal, state, and local environmental laws and regulations.

B. 1. Environmental Benefit - Project One

Paving the parking lot directly adjacent to TCEQ's monitoring stations located at 9525 1/2 Clinton Drive has several direct and indirect environmental benefits. First, this parking lot is located upwind from residential neighborhoods and may be a source of particulate matter that impacts the neighborhoods. Respirable particulate matter (10 microns and smaller) is one component of particulate matter usually associated with unpaved roads and parking lots. This smaller sized particulate matter is easily inhaled into the lungs and can negatively impact asthmatics and other individuals living in the downwind neighborhood. Paving this parking lot can help minimize exposure of nearby residents to this environmental condition.

In addition, particulate matter from this parking lot impacts the nearby (< 50 m) Clinton Drive air quality monitors resulting in particulate readings which may not be representative of the general area. This monitoring station is designated as a neighborhood scale particulate monitoring station designed to provide representative air quality information on particulate concentrations over several kilometers (500 m to 4 km). The proximity of this unpaved parking lot may influence the monitored values and result in the monitor only being representative of air quality over a much smaller area. This can limit the use of the monitoring data in relaying air quality information for particulate matter to the community, regulators, and nearby industry. It is important that accurate air quality data representative of the intended area (and not a few hundred meters) be available for all parties to make decisions on daily activities and air quality assessments. This SEP will provide a discernible environmental benefit by reducing particulate matter emissions in this community.

B. 2. Environmental Benefit - Project Two

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

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete these projects and comply with all other provisions of this SEP. The Respondent shall complete Project One in its entirety and if has not spent at least the SEP Offset Amount upon completion of Project One, the Respondent shall contribute the balance of the SEP Offset Amount to the third-party recipient as specified above. The total combined amount the Respondent shall pay to TCEQ and offset in this SEP shall equal not less than \$210,000.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of this SEP. The Respondent shall complete Project One within 180 days of the effective date of this Agreed Order. Within 90 days after completion of Project One, and not later than 360 days after the effective date of this Agreed Order, the Respondent shall contribute any remaining SEP Offset Amount as specified in this Agreed Order. If making a contribution, the Respondent shall submit a copy of the Final Agreed Order with the contribution to:

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

**3. Records and Reporting**

A. Project One

Initial report. Within 30 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

Progress Reports. Within 90 days of the effective date of this Agreed Order, the Respondent shall submit a written report of the progress of completion for Project One, including a reasonable estimation of the anticipated completion date. The Respondent shall submit a Progress Report to TCEQ in 90-day increments thereafter.

Final Report. Within 30 days after completion of Project One, and not later than 270 days from the effective date of this Agreed Order, the Respondent shall submit a Final Report to the TCEQ which includes:

1. An itemized list of expenditures and total of costs incurred with receipts, copies of checks, or other verifying documentation attached. Expenditures shall be allowed at a reasonable and customary rate for the described work in that area. Determination of what constitutes a reasonable and customary rate rests solely with the TCEQ Executive Director;
2. Maps showing area of work completed;
3. A quantification of the area paved
4. Before and after photographs of the project; and
5. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

B. Project Two

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. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. 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

**6. 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.

**7. 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

J.C. Evans Construction Company, Inc.  
Docket No. 2005-0897-AIR-E - Attachment A

state or federal regulatory program.

**8. 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 May 10, 2005



<b>DATES</b>	Assigned PCW	02-May-2005 16-May-2005	Screening	05-May-2005	EPA Due	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	J.C. Evans Construction Co. Inc.
Reg. Ent. Ref. No.	RN103045340
Facility/Site Region	11-Austin
<b>Major/Minor Source</b>	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	25508	No. of Violations	1
Docket No.	2005-0897-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Kensley Greuter
Multi-Media		EC's Team	Enforcement Team 8
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** 0% Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability** 0% Enhancement **Subtotal 4**

Notes

**Good Faith Effort to Comply** 0% Reduction **Subtotal 5**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with a small x)

Notes

**Economic Benefit** 0% Enhancement\* **Subtotal 6**

Total EB Amounts	\$5	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$1,000	

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL** 0% 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** 05-May-2005 **Docket No.** 2005-0897-AIR-E **PCW**  
**Respondent** J.C. Evans Construction Co. Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 25508 *PCW Revision May 10, 2005*  
**Reg. Ent. Reference No.** RN103045340  
**Media [Statute]** Air Quality  
**Enf. Coordinator** Kensley Greuter

**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	1	0%
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 disclosed)	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%
Other	<i>Please Enter Yes or No</i>		
	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 0%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes** An adjustment for the Compliance History is not recommended because a mandatory statutory penalty amount is being assessed.

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

<b>Screening Date</b> 05-May-2005	<b>Docket No.</b> 2005-0897-AIR-E	<b>PCW</b>
<b>Respondent</b> J.C. Evans Construction Co. Inc.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 25508	<i>PCW Revision May 10, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN103045340		
<b>Media [Statute]</b> Air Quality		
<b>Enf. Coordinator</b> Kensley Greuter		
<b>Violation Number</b>	1	
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 116.110(a)(1)	
<b>Secondary Rule Cite(s)</b>	Tex. Health and Safety Code §§ 382.085(b) and 382.0518(a)	
<b>Violation Description</b>	Failure to obtain a permit or satisfy the conditions of a permit by rule (PBR) to operate an existing facility, as documented during an investigation conducted on March 22, 2005. Specifically, the Respondent was operating a rock crusher without authorization from the TCEQ.	
<b>Base Penalty</b>		\$10,000

>> **Environmental, Property and Human Health Matrix**

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

>> **Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="100%"/>

Matrix Notes

The Respondent failed to comply with 100% of the rule requirement; however, per Tex. Water Code § 7.052(b), a rock crusher operating without a permit is penalized \$10,000 for each day that a continuing violation occurs.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	<i>daily</i>	<input checked="" type="checkbox"/>
	<i>monthly</i>	<input type="checkbox"/>
	<i>quarterly</i>	<input type="checkbox"/>
	<i>semiannual</i>	<input type="checkbox"/>
	<i>annual</i>	<input type="checkbox"/>
	<i>single event</i>	<input type="checkbox"/>

**Violation Base Penalty**

Twenty-one daily events are recommended based on documentation of the violation during an investigation that began on March 22, 2005. A penalty of \$10,000 per day is required by Tex. Water Code § 7.052(b).

**Economic Benefit (EB) for this violation**

**Estimated EB Amount**

**Statutory Limit Test**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent J.C. Evans Construction Co. Inc.  
 Case ID No. 25508  
 Reg. Ent. Reference No. RN103045340  
 Media [Statute] Air Quality  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$1,000	16-Feb-2005	22-Mar-2005	0.1	\$5	n/a	\$5
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated delayed cost to obtain a TCEQ permit. The Date Required is the first date of operation without a permit and the Final date is the date the rock crusher voluntarily ceased operation.

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  TOTAL

# Compliance History

Customer/Respondent/Owner-Operator: CN600407704 J.C. Evans Construction Co. Inc. Classification: AVERAGE Rating: 2.860  
Regulated Entity: RN103045340 JARRELL PLANT 2 Classification: AVERAGE Site Rating: 3.01  
ID Number(s): BY DEFAULT  
Location: PORTABLE Rating Date: 9/1/04 Repeat Violator: NO  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: May 05, 2005  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 05, 2000 to May 05, 2005  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Kensley Greuter Phone: (512) 239-2520

## 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
6. Comments:

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, 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.)  
07/30/2003 (147496)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 06/18/2003 (63515)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
Description: Failure to comply with general requirements of a Tier II standard permit for temporary rock crushers.
  - 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  
J.C. EVANS CONSTRUCTION  
COMPANY, INC.,  
RN103045340

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2005-0897-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 J.C. Evans Construction Company, Inc. ("J.C. Evans") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, represented by the Litigation Division, and J.C. Evans, represented by Molly Cagle of the law firm of Vinson and Elkins, LLP, appear before the Commission and together stipulate that:

1. J.C. Evans owns and operates a rock crusher located at County Road 239, near, Georgetown, Williamson 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 J.C. Evans agree that the Commission has jurisdiction to enter this Agreed Order, and that J.C. Evans is subject to the Commission's jurisdiction.
4. J.C. Evans received notice of the violation alleged in Section II ("Allegations") on or about May 8, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by J.C. Evans of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of two hundred ten thousand dollars (\$210,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). J.C. Evans paid forty-two thousand dollars (\$42,000.00) of the administrative penalty. Pursuant to TEX. WATER CODE § 7.067, one hundred sixty-eight thousand dollars (\$168,000.00) of the administrative penalty shall be conditionally offset by J.C. Evans' completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. J.C. Evans' obligation to pay the conditionally offset portion of the administrative penalty shall be discharged upon final completion of all provisions of the SEP agreement.
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 J.C. Evans 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 J.C. Evans ceased operation of the rock crusher on March 22, 2005 in response to this enforcement action.
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 J.C. Evans 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 March 22, 2005, a TCEQ Austin Regional Investigator documented that J.C. Evans violated 30 TEX. ADMIN. CODE §116.110(a)(1) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) by failing to obtain authorization or satisfy the conditions of a permit by rule (PBR) to operate an existing facility. Specifically, J.C. Evans operated a rock crusher for 21 days at a quarry owned by Espinosa Stone located at the Site from February 16, 2005 to March 22, 2005, without authorization from the TCEQ.

### III. DENIALS

J.C. Evans generally denies each allegation in Section II ("Allegations").

### IV. ORDER

1. It is, therefore, ordered by the TCEQ that J.C. Evans pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and J.C. Evans' 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. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: J.C. Evans Construction Company, Inc., Docket No. 2005-0897-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. J.C. Evans shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067, as set forth in Section I, Paragraph 6, above. One hundred sixty-eight thousand dollars (\$168,000.00) of the assessed administrative penalty shall be offset with the condition that J.C. Evans implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. J.C. Evans' obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provision of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon J.C. Evans.
4. This Agreed Order, issued by the Commission, shall not be admissible against J.C. Evans 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.
5. 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

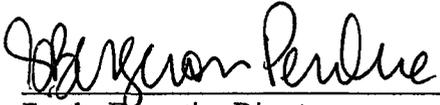
transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

6. 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 J.C. Evans, or three days after the date on which the Commission mails notice of the Order to J.C. Evans, 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

5/20/2009

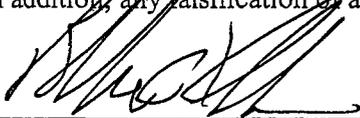
\_\_\_\_\_  
Date

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, if any, 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, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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



\_\_\_\_\_  
Signature

5-8-09

\_\_\_\_\_  
Date

BLAKE A. KUNKMAN  
Name (Printed or typed) PRESIDENT  
Authorized representative of  
J.C. Evans Construction Company, Inc.

PRESIDENT  
\_\_\_\_\_  
Title

**Attachment A**  
**Supplemental Environmental Project**

Attachment A  
Docket Number: 2005-0897-AIR-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

Respondent:	J.C. Evans Construction Company, Inc.
Penalty Amount:	Two hundred ten thousand dollars (\$210,000)
SEP Offset Amount:	Up to One hundred sixty-eight thousand dollars (\$168,000)
Type of SEP:	Custom and Pre-approved (2 SEPs)
Type of SEP - Project One:	Custom
Location of SEP:	Harris County
Type of SEP - Project Two:	Contribution to Third-party Administrator
Third-Party Recipient:	<b>Texas Association of Resource Conservation &amp; Development Areas, Inc. (RC&amp;D) – Cleanup of Unauthorized Dumpsites</b>
Location of SEP:	Williamson 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 perform and 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 and/or completion of the contribution in accordance with the terms of this Attachment A.

**1. Project Description**

A. 1. Project One

The Respondent shall perform an air pollution reduction project involving paving (with non-asphalt base materials) unpaved parking and driving areas at 9601 Clinton Drive in Houston, Texas. The subject site is a 0.773 acre commercial tract located at the northeast corner of Clinton Drive and Clinton Park Avenue in the Galena Park area of Houston. The legal description is: Business Tract "C", of CLINTON PARK ADDITION, a subdivision in the John Brown Survey, Abstract No. 8, in Houston, Harris County, Texas, according to the map or plat thereof, recorded in Volume 18, Pages 28, 29 and 30 of the Map Records of Harris County, Texas.

The site is defined by four distinct areas:

1. Area 1 is the 8,025 sq. ft. area within the public right-of-way between the eastern edge of Clinton Park Avenue pavement and the eastern right-of-way line adjacent to the grocery store.
2. Area 2 is 8,415 sq. ft. area comprising the concrete driveway and parking area between the grocery store and the Clinton Drive right-of-way.
3. Area 3 is the 4,015 sq. ft. area in front of the seafood restaurant between the building and the Clinton Drive right-of-way.
4. Area 4 is the 5,263 sq. ft. area of dirt and asphalt driveway to the site from Clinton Drive within the Clinton Drive right-of-way.

J.C. Evans Construction Company, Inc.  
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The Respondent shall provide site specific engineer work, obtain permits, provide excavation and disposal of dirt, asphalt and concrete from areas 1, 3 & 4, perform site preparation, and install 6" concrete pavement in those same areas as shown in the scope of work approved by TCEQ.

The Respondent certifies that it has no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action. The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations.

A. 2. Project Two

The Respondent shall contribute any remaining unspent portion of the SEP Offset Amount for Project One to the Third-Party Recipient named above. The contribution will be to **Texas Association of Resource Conservation & Development Areas, Inc. (RC&D)** for *Cleanup of Unauthorized Dumpsites* as set forth in an agreement between the Third-Party Recipient and the TCEQ. The SEP Offset Amount will pay for the labor and disposal costs associated with proper clean up and disposal of wastes, debris, or abandoned tires.

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. The project will be administered in accordance with federal, state, and local environmental laws and regulations.

B. 1. Environmental Benefit - Project One

Paving the parking lot directly adjacent to TCEQ's monitoring stations located at 9525 ½ Clinton Drive has several direct and indirect environmental benefits. First, this parking lot is located upwind from residential neighborhoods and may be a source of particulate matter that impacts the neighborhoods. Respirable particulate matter (10 microns and smaller) is one component of particulate matter usually associated with unpaved roads and parking lots. This smaller sized particulate matter is easily inhaled into the lungs and can negatively impact asthmatics and other individuals living in the downwind neighborhood. Paving this parking lot can help minimize exposure of nearby residents to this environmental condition.

In addition, particulate matter from this parking lot impacts the nearby (< 50 m) Clinton Drive air quality monitors resulting in particulate readings which may not be representative of the general area. This monitoring station is designated as a neighborhood scale particulate monitoring station designed to provide representative air quality information on particulate concentrations over several kilometers (500 m to 4 km). The proximity of this unpaved parking lot may influence the monitored values and result in the monitor only being representative of air quality over a much smaller area. This can limit the use of the monitoring data in relaying air quality information for particulate matter to the community, regulators, and nearby industry. It is important that accurate air quality data representative of the intended area (and not a few hundred meters) be available for all parties to make decisions on daily activities and air quality assessments. This SEP will provide a discernible environmental benefit by reducing particulate matter emissions in this community.

B. 2. Environmental Benefit - Project Two

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

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete these projects and comply with all other provisions of this SEP. The Respondent shall complete Project One in its entirety and if has not spent at least the SEP Offset Amount upon completion of Project One, the Respondent shall contribute the balance of the SEP Offset Amount to the third-party recipient as specified above. The total combined amount the Respondent shall pay to TCEQ and offset in this SEP shall equal not less than \$210,000.

2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of this SEP. The Respondent shall complete Project One within 180 days of the effective date of this Agreed Order. Within 90 days after completion of Project One, and not later than 360 days after the effective date of this Agreed Order, the Respondent shall contribute any remaining SEP Offset Amount as specified in this Agreed Order. If making a contribution, the Respondent shall submit a copy of the Final Agreed Order with the contribution to:

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

3. **Records and Reporting**

A. Project One

Initial report. Within 30 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

Progress Reports. Within 90 days of the effective date of this Agreed Order, the Respondent shall submit a written report of the progress of completion for Project One, including a reasonable estimation of the anticipated completion date. The Respondent shall submit a Progress Report to TCEQ in 90-day increments thereafter.

Final Report. Within 30 days after completion of Project One, and not later than 270 days from the effective date of this Agreed Order, the Respondent shall submit a Final Report to the TCEQ which includes:

1. An itemized list of expenditures and total of costs incurred with receipts, copies of checks, or other verifying documentation attached. Expenditures shall be allowed at a reasonable and customary rate for the described work in that area. Determination of what constitutes a reasonable and customary rate rests solely with the TCEQ Executive Director;
2. Maps showing area of work completed;
3. A quantification of the area paved
4. Before and after photographs of the project; and
5. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

B. Project Two

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. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. 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

**6. 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.

**7. 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

J.C. Evans Construction Company, Inc.  
Docket No. 2005-0897-AIR-E - Attachment A

state or federal regulatory program.

**8. 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.