

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2009-0088-MLM-E TCEQ ID: RN104609045 CASE NO.: 37003**  
**RESPONDENT NAME: MARK LOPEZ DBA M&R AGGREGATES**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input checked="" type="checkbox"/> USED OIL	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 7414 East United States Highway 83, Rio Grande City, Starr County

**TYPE OF OPERATION:** sand and gravel mining plant

**SMALL BUSINESS:**  Yes  No  N/A

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired December 7, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-3400  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Ms. Nadia Hameed, Air Enforcement Section, MC R-12, (713) 767-3629

**TCEQ Regional Contact:** Mr. Jaime A. Garza, Harlingen Regional Office, MC R-15, (956) 430-6030

**Respondent:** Mr. Mark Lopez, Owner, M&R Aggregates, 7414 East US Highway 83, Rio Grande City, Texas 78582

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" 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> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 7, 2008</p> <p><b>Date of NOE Relating to this Case:</b> March 23, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on August 7, 2009, and sent on the same date to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>MLM:</b></p> <ol style="list-style-type: none"> <li>Failed to label a used oil container with the words "Used Oil" [30 TEX. ADMIN. CODE § 324.1 and 40 C.F.R. § 279.22(c)].</li> <li>Failed to clean up used oil that had spilled on the soil around the used oil container [30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. § 279.22(d)].</li> <li>Failed to maintain a copy of the permit and records containing information and data sufficient to demonstrate compliance with the permit [TEX. HEALTH &amp; SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.115(b)(2)(E)(i) and (c); and Air Permit No. 75790, General Condition No. 7 and Special Conditions 4, 7A, 7B, and 7C].</li> <li>Failed to have permanently mounted spray bars installed at all material transfer points and area-type water sprays installed at all stockpiles and active work areas [TEX. HEALTH &amp; SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.115(c); and Air Permit No. 75790, Special Condition 5A].</li> </ol>	<p><b>Total Assessed:</b> \$32,025</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$32,025</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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 on November 3, 2008, the TCEQ Harlingen Office received a notarized letter from Respondent stating that the rock crushers will not be operated until they are authorized.</p> <p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 15 days, submit an administratively complete permit application for the rock crushers.</li> <li>Within 30 days:             <ol style="list-style-type: none"> <li>Begin maintaining a copy of the permit and documentation of hourly production rates, the amount of material processed on a daily basis, the daily application of road dust control and records for all repairs and maintenance of abatement systems for a rolling two year period;</li> <li>Mount spray bars at all material transfer points and area-water sprays at all stockpiles and active work areas and begin operating them as required to maintain compliance; and</li> <li>Label all containers storing used oil with the words "Used Oil" and clean up and properly dispose of the spilled oil.</li> </ol> </li> <li>Within 45 days, submit written certification to demonstrate compliance with Ordering Provision no. 2.</li> <li>Within 180 days, submit written certification that either authorization to construct and operate the rock crushers has been obtained or that construction/operation has been inactive until authorization has been obtained.</li> </ol>

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
5. Failed to obtain authorization for three rock crushers [TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a)].		



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	17-Dec-2008	Screening	12-Jan-2009	EPA Due	
	PCW	8-Jun-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Mark Lopez dba M&R Aggregates		
Reg. Ent. Ref. No.	RN104609045		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	37003	No. of Violations	2	
Docket No.	2009-0088-MLM-E	Order Type	1660	
Media Program(s)	Used Oil	Government/Non-Profit	No	
Multi-Media	Air	Enf. Coordinator	Nadia Hameed	
		EC's Team	Enforcement Team 5	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$2,500

## 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** 0.0% Enhancement Subtotals 2, 3, & 7

Notes: No penalty enhancements or reductions due to average performer classification.

**Culpability** No 0.0% Enhancement Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

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

**Economic Benefit** 0.0% Enhancement\* Subtotal 6

Total EB Amounts	\$11
Approx. Cost of Compliance	\$300

\*Capped at the Total EB \$ Amount

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

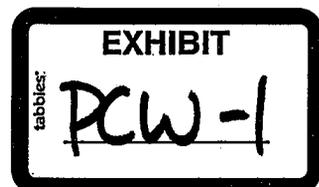
**DEFERRAL** 0.0% Reduction Adjustment

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

Notes:

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY**



Screening Date 12-Jan-2009

Docket No. 2009-0088-MLM-E

PCW

Respondent Mark Lopez dba M&R Aggregates

Policy Revision 2 (September 2002)

Case ID No. 37003

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104609045

Media [Statute] Used Oil

Enf. Coordinator Nadia Hameed

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No penalty enhancements or reductions due to average performer classification.

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

<b>Screening Date</b> 12-Jan-2009	<b>Docket No.</b> 2009-0088-MLM-E	<b>PCW</b>			
<b>Respondent</b> Mark Lopez dba M&R Aggregates	<small>Policy Revision 2 (September 2002)</small>				
<b>Case ID No.</b> 37003	<small>PCW Revision October 30, 2008</small>				
<b>Reg. Ent. Reference No.</b> RN104609045					
<b>Media [Statute]</b> Used Oil					
<b>Enf. Coordinator</b> Nadia Hameed					
<b>Violation Number</b>	1				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 324.1 and 40 Code of Federal Regulations § 279.22(c)				
<b>Violation Description</b>	Failed to label the used oil container at the site with the words "Used Oil".				
<b>Base Penalty</b>		\$2,500			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>	<b>Harm</b>				
	Release	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				<b>Percent</b> <input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
		<b>Falsification</b>	Major	Moderate	Minor
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
				<b>Percent</b> <input type="text" value="1%"/>	
<b>Matrix Notes</b>	Less than 30% of the rule requirements were not met.				
<b>Adjustment</b>				\$2,475	
				\$25	
<b>Violation Events</b>					
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<b>Number of violation days</b>		
		<input type="text" value="98"/>			
<small>mark only one with an x</small>	daily	<input type="checkbox"/>			
	weekly	<input type="checkbox"/>			
	monthly	<input type="checkbox"/>			
	quarterly	<input type="checkbox"/>			
	semiannual	<input type="checkbox"/>			
	annual	<input type="checkbox"/>			
	single event	<input checked="" type="checkbox"/>			
				<b>Violation Base Penalty</b> <input type="text" value="\$25"/>	
One single event is recommended based on documentation of the violation during the investigation on 10/07/2008.					
<b>Good Faith Efforts to Comply</b>		0.0% Reduction	<input type="text" value="\$0"/>		
		Before NOV	NOV to EDPRP/Settlement		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>			
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>			
N/A	<input checked="" type="checkbox"/>	(mark with x)			
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.				
<b>Violation Subtotal</b>				\$25	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$2"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$25"/>		
			<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$25"/>		

## Economic Benefit Worksheet

**Respondent:** Mark Lopez dba M&R Aggregates

**Case ID No.:** 37003

**Reg. Ent. Reference No.:** RN104609045

**Media:** Used Oil

**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$50	7-Oct-2008	11-Jul-2009	0.76	\$2	n/a	\$2

**Notes for DELAYED costs**

Estimated cost to label container. Date required is the date of the investigation. Final date is the date corrective actions are projected to be 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**

\$50

**TOTAL**

\$2

<b>Screening Date</b> 12-Jan-2009	<b>Docket No.</b> 2009-0088-MLM-E	<b>PCW</b>		
<b>Respondent</b> Mark Lopez dba M&R Aggregates	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 37003	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN104609045				
<b>Media [Statute]</b> Used Oil				
<b>Enf. Coordinator</b> Nadia Hameed				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulations § 279.22(d)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to clean-up used oil spilled on the soil around the used oil container."/>			
<b>Base Penalty</b>		<input type="text" value="\$2,500"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Release</b>	<b>Harm</b>		
		Major      Moderate      Minor		
	Actual	<input type="text"/>	<input type="text" value="x"/>	
	Potential	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	Major      Moderate      Minor		
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment 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."/>			
<b>Adjustment</b>		<input type="text" value="\$2,250"/>		
<input type="text" value="\$250"/>				
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="2"/>	<b>Number of violation days</b>	
		<input type="text" value="98"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text" value="x"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
<b>Violation Base Penalty</b>		<input type="text" value="\$500"/>		
<input type="text" value="Two quarterly events are recommended based on documentation of the violation during the investigation on 10/07/2008 to the 1/12/2009 screening date."/>				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>	
		Before NOV      NOV to EDRP/Settlement Offer		
	Extraordinary	<input type="text"/>		
	Ordinary	<input type="text"/>		
	N/A	<input type="text" value="x"/> (mark with x)		
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
<b>Violation Subtotal</b>		<input type="text" value="\$500"/>		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$9"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$500"/>	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$500"/>	

## Economic Benefit Worksheet

**Respondent** Mark Lopez dba M&R Aggregates  
**Case ID No.** 37003  
**Reg. Ent. Reference No.** RN104609045  
**Media** Used Oil  
**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)				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	\$250	7-Oct-2008	11-Jul-2009	0.76	\$9	n/a	\$9
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to clean-up the oil. Date required is the date of the investigation. Final date is the date corrective actions are projected to be 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

\$250

**TOTAL**

\$9



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	17-Dec-2008	Screening	12-Jan-2009	EPA Due	
	PCW	8-Jun-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Mark Lopez dba M&R Aggregates		
Reg. Ent. Ref. No.	RN104609045		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37003	No. of Violations	3
Docket No.	2009-0088-MLM-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media	Used Oil	Enf. Coordinator	Nadia Hameed
		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** 0.0% Enhancement Subtotals 2, 3, & 7

Notes: No penalty enhancements or reductions due to average performer classification.

**Culpability** No 0.0% Enhancement Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

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

**Economic Benefit** 0.0% Enhancement\* Subtotal 6

Total EB Amounts	\$366	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$7,000	

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount**

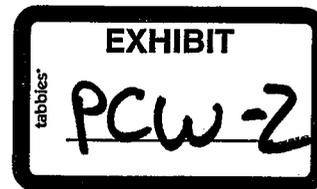
**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  Reduction Adjustment

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

Notes: No deferral is offered since this is not an expedited order.

**PAYABLE PENALTY**



Screening Date 12-Jan-2009

Docket No. 2009-0088-MLM-E

PCW

Respondent Mark Lopez dba M&R Aggregates

Policy Revision 2 (September 2002)

Case ID No. 37003

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104609045

Media [Statute] Air

Enf. Coordinator Nadia Hameed

### 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	0	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 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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No penalty enhancements or reductions due to average performer classification.

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

<b>Screening Date</b> 12-Jan-2009	<b>Docket No.</b> 2009-0088-MLM-E	<b>PCW</b>				
<b>Respondent</b> Mark Lopez dba M&R Aggregates	<i>Policy Revision 2 (September 2002)</i>					
<b>Case ID No.</b> 37003	<i>PCW Revision October 30, 2008</i>					
<b>Reg. Ent. Reference No.</b> RN104609045						
<b>Media [Statute]</b> Air						
<b>Enf. Coordinator</b> Nadia Hameed						
<b>Violation Number</b> <input type="text" value="1"/>						
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 116.115(b)(2)(E)(i) and (c), Air Permit No. 75790, General Condition No. 7 and Special Conditions 4, 7A, B, and C, and Tex. Health & Safety Code § 382.085(b)					
<b>Violation Description</b>	Failed to maintain copy of the permit and records containing the information and data sufficient to demonstrate compliance with the permit. Specifically, documentation of hourly production rates, amount of material processed on a daily basis, daily application of road dust control and records for all repairs and maintenance of abatement systems for a rolling two year period were not made available during the investigation.					
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>				
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>						
<b>OR</b>	<b>Harm</b>					
	Release    Major    Moderate    Minor					
Actual	<input type="text"/>	<input type="text"/>				
Potential	<input type="text"/>	<input type="text"/>				
<b>Percent</b>		<input type="text" value="0%"/>				
<b>&gt;&gt; Programmatic Matrix</b>						
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>		
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Percent</b>					<input type="text" value="10%"/>	
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirements were not met."/>					
<b>Adjustment</b>					<input type="text" value="\$9,000"/>	
					<input type="text" value="\$1,000"/>	
<b>Violation Events</b>						
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<b>Number of violation days</b>			<input type="text" value="731"/>
<i>mark only one with an x</i>	daily	<input type="text"/>				<b>Violation Base Penalty</b>
	weekly	<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"/>				<input type="text" value="\$1,000"/>	
<input type="text" value="One single event is recommended based on documentation of the violation during the investigation on 10/07/2008."/>						
<b>Good Faith Efforts to Comply</b>						
		<input type="text" value="0.0%"/>	<b>Reduction</b>		<input type="text" value="\$0"/>	
		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)				
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>					
<b>Violation Subtotal</b>					<input type="text" value="\$1,000"/>	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>			
<b>Estimated EB Amount</b>		<input type="text" value="\$138"/>	<b>Violation Final Penalty Total</b>		<input type="text" value="\$1,000"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					<input type="text" value="\$1,000"/>	

### Economic Benefit Worksheet

Respondent Mark Lopez dba M&R Aggregates  
 Case ID No. 37003  
 Reg. Ent. Reference No. RN104609045  
 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  
 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	\$1,000	7-Oct-2006	11-Jul-2009	2.76	\$138	n/a	\$138
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 a copy of the permit, records of hourly production rates, amount of material processed on a daily basis, daily application of road dust control and records for all repairs and maintenance of abatement systems. Date required is two years prior to the date of the investigation. Final date is the date corrective actions are projected to be 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    \$1,000

TOTAL    \$138

<p><b>Screening Date</b> 12-Jan-2009</p> <p><b>Respondent</b> Mark Lopez dba M&amp;R Aggregates</p> <p><b>Case ID No.</b> 37003</p> <p><b>Reg. Ent. Reference No.</b> RN104609045</p> <p><b>Media [Statute]</b> Air</p> <p><b>Enf. Coordinator</b> Nadia Hameed</p> <p><b>Violation Number</b> <input type="text" value="2"/></p> <p><b>Rule Cite(s)</b> 30 Tex. Admin. Code § 116.115(c), Air Permit No. 75790, Special Condition 5.A and Tex. Health &amp; Safety Code § 382.085(b)</p> <p><b>Violation Description</b> Failed to have permanently mounted spray bars installed at all material transfer points and area-type water sprays installed at all stockpiles and active work areas.</p>	<p><b>Docket No.</b> 2009-0088-MLM-E</p> <p style="text-align: right;"><b>PCW</b></p> <p style="text-align: right;"><small>Policy Revision 2 (September 2002)</small></p> <p style="text-align: right;"><small>PCW Revision October 30, 2008</small></p>																					
<b>Base Penalty</b> <input type="text" value="\$10,000"/>																						
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																						
<p><b>OR</b></p> <table border="1" style="margin-left: 20px;"> <tr> <td></td> <td colspan="3" style="text-align: center;"><b>Harm</b></td> <td></td> </tr> <tr> <td><b>Release</b></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td><b>Actual</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"><b>Percent</b> <input type="text" value="5%"/></td> </tr> <tr> <td><b>Potential</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: center;">x</td> </tr> </table>		<b>Harm</b>				<b>Release</b>	Major	Moderate	Minor		<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="5%"/>	<b>Potential</b>	<input type="text"/>	<input type="text"/>	x			
	<b>Harm</b>																					
<b>Release</b>	Major	Moderate	Minor																			
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<b>Potential</b>	<input type="text"/>	<input type="text"/>	x																			
<b>&gt;&gt; Programmatic Matrix</b>																						
<table border="1" style="margin-left: 20px;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td><b>Falsification</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"><b>Percent</b> <input type="text" value="0%"/></td> </tr> <tr> <td><b>Matrix Notes</b></td> <td colspan="3" style="border: 1px solid black; padding: 5px;">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.</td> </tr> </table>		Major	Moderate	Minor		<b>Falsification</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	<b>Matrix Notes</b>	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.										
	Major	Moderate	Minor																			
<b>Falsification</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>																		
<b>Matrix Notes</b>	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.																					
<b>Adjustment</b> <input type="text" value="\$9,500"/>																						
<b>\$500</b>																						
<b>Violation Events</b>																						
<p>Number of Violation Events <input type="text" value="1"/> <input type="text" value="98"/> Number of violation days</p> <table border="1" style="margin-left: 20px;"> <tr> <td rowspan="7" style="vertical-align: middle;"><small>mark only one with an x</small></td> <td>daily</td> <td><input type="text"/></td> </tr> <tr> <td>weekly</td> <td><input type="text"/></td> </tr> <tr> <td>monthly</td> <td><input type="text"/></td> </tr> <tr> <td>quarterly</td> <td><input type="text"/></td> </tr> <tr> <td>semiannual</td> <td><input type="text"/></td> </tr> <tr> <td>annual</td> <td><input type="text"/></td> </tr> <tr> <td>single event</td> <td style="text-align: center;">x</td> </tr> </table>	<small>mark only one with an x</small>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x	<p><b>Violation Base Penalty</b> <input type="text" value="\$500"/></p>						
<small>mark only one with an x</small>		daily	<input type="text"/>																			
		weekly	<input type="text"/>																			
		monthly	<input type="text"/>																			
		quarterly	<input type="text"/>																			
		semiannual	<input type="text"/>																			
		annual	<input type="text"/>																			
	single event	x																				
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<b>Good Faith Efforts to Comply</b>																						
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	0.0%	<b>Reduction</b>																				
	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>																				
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<b>Ordinary</b>	<input type="text"/>	<input type="text"/>																				
<b>N/A</b>	x	<small>(mark with x)</small>																				
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.																					
<b>Economic Benefit (EB) for this violation</b>																						
<p><b>Estimated EB Amount</b> <input type="text" value="\$190"/></p>	<p><b>Statutory Limit Test</b></p> <p><b>Violation Final Penalty Total</b> <input type="text" value="\$500"/></p> <p><b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$500"/></p>																					

### Economic Benefit Worksheet

**Respondent** Mark Lopez dba M&R Aggregates  
**Case ID No.** 37003  
**Reg. Ent. Reference No.** RN104609045  
**Media** Air  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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)	\$5,000	7-Oct-2008	11-Jul-2009	0.76	\$190	n/a	\$190

**Notes for DELAYED costs**

Estimated cost to ensure that permanently mounted spray bars are installed at all material transfer points and area-type water sprays are installed at all stockpiles and active work areas. Date required is the date of the investigation. Final date is the date corrective actions are projected to be 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**

\$5,000

**TOTAL**

\$190

<b>Screening Date</b> 12-Jan-2009	<b>Docket No.</b> 2009-0088-MLM-E	<b>PCW</b>		
<b>Respondent</b> Mark Lopez dba M&R Aggregates	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 37003	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN104609045				
<b>Media [Statute]</b> Air				
<b>Enf. Coordinator</b> Nadia Hameed				
<b>Violation Number</b> <input type="text" value="3"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 116.110(a) and Tex. Health &amp; Safety Code §§ 382.0518(a) and 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to obtain authorization for three rock crushers. Specifically, it was noted that the Pioneer jaw crusher, Symons cone crusher and Texas Crusher Systems Auto-Balance Impact crusher observed at the plant were operating without authorization."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Release</b>	<b>Harm</b>		
		Major      Moderate      Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="100%"/>	
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met; 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."/>			
<b>Adjustment</b>		<input type="text" value="\$0"/>		
		<input type="text" value="\$10,000"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="3"/>	<b>Number of violation days</b>	
		<input type="text" value="3"/>		
<i>mark only one with an x</i>	daily	<input type="text" value="x"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
		<b>Violation Base Penalty</b>	<input type="text" value="\$30,000"/>	
<input type="text" value="Three daily events are recommended based on documentation of the violation for three rock crushers during the investigation on 10/07/2008."/>				
<b>Good Faith Efforts to Comply</b>		<b>0.0%</b> Reduction	<input type="text" value="\$0"/>	
		Before NOV      NOV to EDRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>		
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
<b>Violation Subtotal</b>		<input type="text" value="\$30,000"/>		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$38"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$30,000"/>	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$30,000"/>	

### Economic Benefit Worksheet

**Respondent** Mark Lopez dba M&R Aggregates  
**Case ID No.** 37003  
**Reg. Ent. Reference No.** RN104609045  
**Media** Air  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	7-Oct-2008	11-Jul-2009	0.76	\$38	n/a	\$38
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to obtain authorization. Date required is the date of the investigation. Final date is the date corrective actions are projected to be 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** \$1,000 **TOTAL** \$38

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602834970 Mark Lopez dba M&R Aggregates Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN104609045 M&R AGGREGATES Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT

ID Number(s): AIR NEW SOURCE PERMITS PERMIT 75790

STORMWATER PERMIT TXR05V601

Location: 7414 East US HIGHWAY 83, RIO GRANDE CITY, TX, 78582

TCEQ Region: REGION 15 - HARLINGEN

Date Compliance History Prepared: December 30, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 29, 2003 to December 29, 2008

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: NHameed Phone: 713-767-3629

## 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. Rating Date: 9/1/2008 Repeat Violator: NO

## 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 11/25/2008 (703037)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MARK LOPEZ DBA M&R  
AGGREGATES,  
RN104609045**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2009-0088-MLM-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 371 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Mark Lopez dba M&R Aggregates ("Mr. Lopez").

The Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Mr. Lopez owns and operates a sand and gravel mining plant at 7414 East United States Highway 83 in Rio Grande City, Starr County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Plant involves or involved the storage and/or management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371.
3. During an inspection on October 7, 2008, a TCEQ Harlingen Regional Office investigator documented that Mr. Lopez:
  - a. Failed to label a used oil container at the Plant with the words "Used Oil";
  - b. Failed to clean up used oil that had spilled on the soil around the used oil container;
  - c. Failed to maintain a copy of the permit and records containing information and data sufficient to demonstrate compliance with the permit. Specifically, documentation of hourly production rates, amount of material processed on a daily basis, daily application of road dust control and records for all repairs and maintenance of

abatement systems for a rolling two-year period were not made available during the investigation;

- d. Failed to have permanently mounted spray bars installed at all material transfer points and area-type water sprays installed at all stockpiles and active work areas; and
  - e. Failed to obtain authorization for three rock crushers. Specifically, it was noted that the Pioneer jaw crusher, Symons cone crusher, and Texas Crusher Systems Auto-Balance Impact crusher observed at the Plant were operating without authorization.
4. Mr. Lopez received notice of the violations on or about March 28, 2009.
  5. The Executive Director recognizes that on November 3, 2008, the TCEQ Harlingen Office received a notarized letter from Mr. Lopez stating that the crushers will not be operated until they are authorized.
  6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mark Lopez dba M&R Aggregates" (the "EDPRP") in the TCEQ Chief Clerk's office on August 7, 2009.
  7. By letter dated August 7, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Lopez with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Mr. Lopez received notice of the EDPRP.
  8. More than 20 days have elapsed since Mr. Lopez received notice of the EDPRP, provided by the Executive Director. Mr. Lopez failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Lopez is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 371 and 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Lopez failed to label a used oil container at the Plant with the words "Used Oil", in violation of 30 TEX. ADMIN. CODE § 324.1 and 40 C.F.R. § 279.22(c).

3. As evidenced by Finding of Fact No. 3.b., Mr. Lopez failed to clean up used oil that had spilled on the soil around the used oil container, in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. § 279.22(d).
4. As evidenced by Finding of Fact No. 3.c., Mr. Lopez failed to maintain a copy of the permit and records containing information and data sufficient to demonstrate compliance with the permit, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.115(b)(2)(E)(i) and 116.115(c); and Air Permit No. 75790, General Condition No. 7, and Special Conditions 4, 7A, 7B, and 7C.
5. As evidenced by Finding of Fact No. 3.d., Mr. Lopez failed to have permanently mounted spray bars installed at all material transfer points and area-type water sprays installed at all stockpiles and active work areas, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.115(c); and Air Permit No. 75790, Special Condition 5A.
6. As evidenced by Finding of Fact No. 3.e., Mr. Lopez failed to obtain authorization for three rock crushers, in violation of TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEX. ADMIN. CODE § 116.110(a).
7. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Lopez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
8. As evidenced by Finding of Fact No. 8, Mr. Lopez failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Lopez and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Lopez for violations of the Texas Health and Safety Code, within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of thirty-two thousand twenty-five dollars (\$32,025.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

## ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Lopez is assessed an administrative penalty in the amount of thirty-two thousand twenty-five dollars (\$32,025.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Lopez's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Mark Lopez dba M&R Aggregates; Docket No. 2009-0088-MLM-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. Mr. Lopez shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Order, Mr. Lopez shall submit an administratively complete permit application for the rock crushers, in accordance with 30 TEX. ADMIN. CODE § 116.111 to:

Air Permits Division, MC 162  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

And respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;

- b. Within 30 days after the effective date of this Order, Mr. Lopez shall:
  - i. Begin maintaining a copy of the permit and documentation of hourly production rates, the amount of material processed on a daily basis, the daily

application of road dust control and records for all repairs and maintenance of abatement systems for a rolling two year period, in accordance with 30 TEX. ADMIN. CODE § 116.115(b)(2)(E)(i) and 116.115(c), and Air Permit No. 75790, General Condition No. 7 and Special Conditions 4, 7A, 7B and 7C;

- ii. Mount spray bars at all material transfer points and area-water sprays at all stockpiles and active work areas and begin operating them as required to maintain compliance, in accordance with 30 TEX. ADMIN. CODE § 116.115(c) and Air Permit No. 75790, Special Condition 5A; and
  - iii. Label all containers storing used oil with the words "Used Oil" and clean up and properly dispose of the spilled oil, in accordance with 30 TEX. ADMIN. CODE § 324.1 and 40 C.F.R. § 279.22(c).
- c. Within 45 days after the effective date of this Order, Mr. Lopez shall submit written certification of compliance with Ordering Provision No. 2.b. above, as described in Ordering Provision No. 2.e. below;
  - d. Within 180 days after the effective date of this Order, Mr. Lopez shall submit written certification as described in Ordering Provision No. 2.e. below that either authorization to construct and operate rock crushers has been obtained or that construction/operation has remained inactive until such time that appropriate authorization is obtained; and
  - e. Pursuant to the certification requirements referenced in Ordering Provision Nos. 2.c and 2.d. above, Mr. Lopez shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with the ordering provisions specified. 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."

Mr. Lopez shall submit the written certification and copies of documentation necessary to demonstrate compliance with the ordering provisions 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:

Jaime A. Garza, Air, Section Manager  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Lopez. Mr. Lopez is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant operations referenced in this Order.
5. If Mr. Lopez fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Lopez's failure to comply is not a violation of this Order. Mr. Lopez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Lopez shall notify the Executive Director within seven days after Mr. Lopez becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Lopez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Lopez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Lopez if the Executive Director determines that Mr. Lopez has not complied with one or more of the terms or conditions in this Order.

Mark Lopez dba M&R Aggregates

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8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

AFFIDAVIT OF JENNIFER COOK

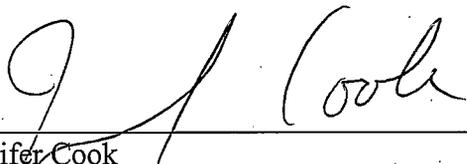
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Jennifer Cook. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mark Lopez dba M&R Aggregates” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 7, 2009.

I sent the EDPRP to Mr. Lopez at his last known address on August 7, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Mr. Lopez received notice of the EDPRP. Mr. Lopez failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference”.

  
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Jennifer Cook  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jennifer Cook, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 15<sup>th</sup> day of OCTOBER, A.D., 2009.

*Margaret Wilson*

Notary Signature

Notary Stamp

