

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2009-1255-EAQ-E **TCEQ ID:** RN102731486 **CASE NO.:** 38101**RESPONDENT NAME:** RTI Hot Mix, LTD.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Yearwood Quarry, 6051 Highway 195, Florence, Williamson County</p> <p>TYPE OF OPERATION: Limestone quarry</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on May 20, 2009, alleging non-compliance with Edwards Aquifer Rules. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 1, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Lance Townsend, Vice President of Operations, RTI Hot Mix, LTD., 16409 Bratton Lane, Austin, Texas 78728 Mr. Clyde Fuller, Vice President, RTI Hot Mix, LTD., 16409 Bratton Lane, Austin, Texas 78728 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: May 20, 2009</p> <p>Date of Investigation Relating to this Case: May 21, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 31, 2009 (NOB)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to comply with the terms of the Edwards Aquifer Aboveground Storage Tank ("AST") plan. Specifically, the investigator observed that a parked payload loader was dripping hydraulic fluid to the ground and observed a second spill of an unknown quantity of hydrocarbons on the ground. No measures had been taken to clean up the leak or spill at the time of the investigation [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer AST Plan, Standard Conditions 2].</p>	<p>Total Assessed: \$800</p> <p>Total Deferred: \$160 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$640</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on May 21, 2009, the same day the spill occurred, the Respondent took action and began following the Edwards Aquifer AST plan by excavating and disposing of the spill and leak by processing the material in the hot mix plant.</p>

Additional ID No(s): 11-04091602B



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Aug-2009	Screening	6-Aug-2009	EPA Due	
	PCW	10-Aug-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	RTI Hot Mix, LTD.
Reg. Ent. Ref. No.	RN102731486
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38101	No. of Violations	1
Docket No.	2009-1255-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Samuel Short
		EC's Team	Enforcement Team 3
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 5.0% Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability No **Subtotal 4**

Notes

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

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

Total EB Amounts
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 6-Aug-2009

Docket No. 2009-1255-EAQ-E

PCW

Respondent RTI Hot Mix, LTD.

Policy Revision 2 (September 2002)

Case ID No. 38101

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN102731486

Media [Statute] Edwards Aquifer

Enf. Coordinator Samuel Short

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of..	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes Enhancement recommended for having one NOV for the same or similar violations within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 6-Aug-2009 **Docket No.** 2009-1255-EAQ-E **PCW**
Respondent RTI Hot Mix, LTD. *Policy Revision 2 (September 2002)*
Case ID No. 38101 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102731486
Media [Statute] Edwards Aquifer
Enf. Coordinator Samuel Short
Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer Aboveground Storage Tank ("AST") Plan, Standard Conditions 2
Violation Description Failed to comply with the terms of the Edwards Aquifer AST plan. Specifically, the investigator observed that a parked pay-loader was dripping hydraulic fluid to the ground and observed a second spill of an unknown quantity of hydrocarbons on the ground. No measures had been taken to clean up the leak or spill at the time of the investigation.

Base Penalty

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

One quarterly event is recommended.

Good Faith Efforts to Comply

	25.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

Notes The Respondent achieved compliance on May 21, 2009.

Violation Subtotal

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 RTI Hot Mix, LTD.
Case ID No. 38101
Reg. Ent. Reference No. RN102731486
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	21-May-2009	21-May-2009	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
 The estimated cost to comply with the terms of the Edwards Aquifer AST plan by excavating and disposing of the leak and spill by processing the material in the hot mix plant. Date required is the date of the investigation and the final date is the date the spill and leak were cleaned up.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 **TOTAL**
\$0

Compliance History Report Pending

Customer/Respondent/Owner-Operator:	CN602684359	RTI Hot Mix, Ltd.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102731486	YEARWOOD QUARRY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	EDWARDS AQUIFER	REGISTRATION		11-98110601
	EDWARDS AQUIFER	REGISTRATION		11-98110601A
	EDWARDS AQUIFER	REGISTRATION		11-98101401
	EDWARDS AQUIFER	REGISTRATION		11-04091602
	EDWARDS AQUIFER	REGISTRATION		11-04091602A
	EDWARDS AQUIFER	REGISTRATION		11-01022803
	EDWARDS AQUIFER	REGISTRATION		11-99030301
	EDWARDS AQUIFER	REGISTRATION		11-04091602B
Location:	6051 HIGHWAY 195, FLORENCE, TX, 76527			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	September 09, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 06, 2004 to August 06, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Samuel Short</u>	Phone:	<u>(512) 239-5363</u>	

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator 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	11/23/2004	(339464)
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- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	03/24/2009	(724796)
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 213, SubChapter A 213.4(j)(6)	
Description:	Failure to obtain approval of physical modifications to the AST facility.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 213, SubChapter A 213.5(e)(1)	
Description:	Failure to remove spills from the containment structure within 24 hours of the spill.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 213, SubChapter A 213.4(k)	
Description:	Failure to comply with the terms of the approved AST facility plan.	
- 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
RTI HOT MIX, LTD.
RN102731486

§
§
§
§
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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2009-1255-EAQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding RTI Hot Mix, LTD. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a limestone quarry at 6051 Highway 195 in Florence, Williamson County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 5, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eight Hundred Dollars (\$800) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Forty Dollars (\$640) of the administrative penalty and One Hundred Sixty

Dollars (\$160) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on May 21, 2009, the same day the spill occurred, the Respondent took action and began following the Edwards Aquifer Aboveground Storage Tank ("AST") plan by excavating and disposing of the spill and leak by processing the material in the hot mix plant.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to comply with the terms of the Edwards Aquifer AST plan, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer AST Plan, Standard Conditions 2, as documented during an investigation conducted on May 21, 2009. Specifically, the investigator observed that a parked pay-loader was dripping hydraulic fluid to the ground and observed a second spill of an unknown quantity of hydrocarbons on the ground. No measures had been taken to clean up the leak or spill at the time of the investigation.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: RTI Hot Mix, LTD., Docket No. 2009-1255-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Zoller
For the Executive Director

2/8/2010
Date

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

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

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

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

Clyde Fuller
Signature

12/11/09
Date

CLYDE FULLER
Name (Printed or typed)
Authorized Representative of
RTI Hot Mix, LTD

V.P.
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order