

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-0918-MLM-E TCEQ ID RN104543780 CASE NO. 35387**  
**RESPONDENT NAME: AUSTIN EQUIPMENT COMPANY, LC**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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 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 checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATIONS OCCURRED:** 501 County Road 344, Jarrell, Williamson County

**TYPE OF OPERATION:** rock quarry

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that trucks hauling rock from the quarry to the crusher were passing through Salado Creek and that best management practices (“BMPs”) were not being maintained, causing sediment and rocks to discharge downstream and giving the water a milky, oily appearance. Complainant also alleged that the water in a pond on his property was cloudy and suspects that a dam/crossing at the creek was breached. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** The complainant has not indicated a desire to protest this action or speak at Agenda. One party, Jean Hamrick, expressed an interest in this matter and requested to be informed when this matter is presented at Agenda. Notice of the pending agenda setting was sent to Ms. Hamrick by the Executive Director on May 14, 2010.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired April 12, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Ms. Evette Alvarado, Water Enforcement Section, MC 169, (512) 239-2573

**TCEQ Regional Contact:** Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929

**Respondent:** Mr. John W. Schuler, Austin Equipment Company, LC, 1405 East Riverside Drive, Austin, Texas 78741

**Respondent's Attorney:** Mr. Duncan Norton, Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue Suite 1900, Austin, Texas 78701

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Dates of Complaint Relating to this Case:</b>                      February 16, 2009</p> <p><b>Dates of Investigation Relating to this Case:</b>                      March 17, 2009; April 8, 2009</p> <p><b>Date of NOE Relating to this Case:</b>                      May 21, 2009</p> <p><b>Background Facts:</b>                      The case was referred to the Litigation Division on November 2, 2009. The EDPRP was filed on November 13, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on February 18, 2010.</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 immediately abate and contain spills or discharges of petroleum products [30 TEX. ADMIN. CODE § 327.5(a) and TCEQ Agreed Order Docket No. 2008-0288-MLM-E, Ordering Provision No. 2.b].</li> <li>Failed to comply with the terms of the approved WPAP by allowing vehicle maintenance to be performed outside the shop area [30 TEX. ADMIN. CODE § 213.4(k), Edwards Aquifer WPAP No. 05022201, Attachment A, Factors Affecting Water Quality, and TCEQ Agreed Order Docket No. 2008-0288-MLM-E, Ordering Provision No. 2.a].</li> <li>Failed to install and maintain temporary erosion and sedimentation controls [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201B, Standard Conditions No. 6].</li> <li>Failed to prevent the discharge of industrial waste into or adjacent to water in the state [TEX. WATER CODE § 26.121, 30 TEX. ADMIN. CODE § 213.4(k), and Edwards Aquifer WPAP No. 05022201, Attachment I, Inspection and Maintenance for Best Management Practices (“BMPs”)].</li> </ol>	<p><b>Total Assessed:</b> \$20,250</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b>                      \$2,100/\$18,150</p> <p>The Respondent paid \$2,100 of the administrative penalty. The remaining amount of \$18,150 shall be payable in 11 monthly payments of \$1,650 each.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b>                      Indifference to legal duty based on failure to comply with prior Agreed Order, Docket No. 2008-0288-MLM-E</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 30 days:                         <ol style="list-style-type: none"> <li>Remediate all areas at the Facility where stained soils were observed, including but not limited to the area behind the scale house and the area where the ASTs are located;</li> <li>Submit a report which includes a summary of remediation activities that took place, performed at the Facility pursuant to the above Ordering Provision, confirming that all contaminated soil at the Facility has been properly removed and remediated;</li> <li>Update operational guidance and conduct employee training to ensure that vehicle maintenance is conducted in authorized locations;</li> <li>Repair the rock berms at the tributary crossing, and the silt fences at the 50 foot tributary buffer;</li> <li>Submit a plan to permanently stabilize the Salado Creek crossing;</li> <li>Remove and properly dispose of the discarded material, sediment, and quarried rock accumulations from Salado Creek and its tributary;</li> <li>Install berms and swales to establish a 10 acre drainage area for the water quality pond; and</li> <li>Either:                                 <ol style="list-style-type: none"> <li>Complete construction of the water quality pond as designed and approved; or</li> <li>Submit a WPAP permit amendment or modification application to TCEQ which redesigns the water quality pond; construction shall be completed within 90 days of approval of the application. If the application is denied, construction of the water quality pond shall be completed within 30 days of such denial.</li> </ol> </li> </ol> </li> </ol>

**VIOLATION SUMMARY CHART:**

<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>5. Failed to comply with the terms of the approved WPAP regarding the drainage area of the water quality pond [30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201B, Special Condition No. III].</p> <p>6. Failed to construct permanent best management practices as designed [30 TEX. ADMIN. CODE §§ 213.4(k) and 213.5(b)(4)(D)(ii)(II) and Edwards Aquifer WPAP No. 05022201B, Permanent Pollution Abatement Measures].</p>		<p>2. Within 45 days, submit written certification demonstrating compliance.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	26-May-2009	<b>Screening</b>	8-Jun-2009	<b>EPA Due</b>	
	<b>PCW</b>	20-Nov-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	AUSTIN EQUIPMENT COMPANY, LC
<b>Reg. Ent. Ref. No.</b>	RN104543780
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	35387	<b>No. of Violations</b>	6
<b>Docket No.</b>	2009-0918-MLM-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Municipal Solid Waste	<b>Enf. Coordinator</b>	Evette Alvarado
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$13,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	50.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$6,750
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Notes: Enhancement recommended for two NOVs with violations same or similar as those cited in this case, and two agreed orders containing a denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$1,448  
 Approx. Cost of Compliance \$28,700  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$20,250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$20,250
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$20,250
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$20,250
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Screening Date 8-Jun-2009

Docket No. 2009-0918-MLM-E

PCW

Respondent AUSTIN EQUIPMENT COMPANY, LC

Policy Revision 2 (September 2002)

Case ID No. 35387

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104543780

Media [Statute] Edwards Aquifer

Enf. Coordinator Evette Alvarado

### 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> )	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	2	40%
	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) 50%

#### >> 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 two NOVs with violations same or similar as those cited in this case, and two agreed orders containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 50%

**Screening Date** 8-Jun-2009 **Docket No.** 2009-0918-MLM-E **PCW**  
**Respondent** AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*  
**Case ID No.** 35387 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104543780  
**Media [Statute]** Edwards Aquifer  
**Enf. Coordinator** Evette Alvarado

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 327.5(a) and TCEQ Agreed Order Docket No. 2008-0288-MLM-E Ordering Provision No. 2.b.

**Violation Description**  
 Failed to immediately abate and contain spills or discharges of petroleum products, as documented during an investigation on March 17, 2009. Specifically, oil stains were observed on the ground in the aboveground storage tank ("AST") area and behind the scale house.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	25%
	Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

**Matrix Notes**  
 Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels as a result of this violation.

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 83 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

*mark only one with an x*

**Violation Base Penalty** \$2,500

One quarterly event is recommended from the date of the investigation (March 17, 2009) to the screening date (June 8, 2009).

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

**Notes**  
 The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$2,500

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$175

**Violation Final Penalty Total** \$3,750

**This violation Final Assessed Penalty (adjusted for limits)** \$3,750

## Economic Benefit Worksheet

**Respondent** AUSTIN EQUIPMENT COMPANY, LC  
**Case ID No.** 35387  
**Reg. Ent. Reference No.** RN104543780  
**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
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	\$3,000	6-Nov-2008	5-Jan-2010	1.16	\$175	n/a	\$175
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for disposal of contaminated soil. Date required is the effective date of the Agreed Order. Final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,000

**TOTAL**

\$175

**Screening Date** 8-Jun-2009 **Docket No.** 2009-0918-MLM-E **PCW**  
**Respondent** AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*  
**Case ID No.** 35387 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104543780  
**Media [Statute]** Edwards Aquifer  
**Enf. Coordinator** Evette Alvarado

**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code § 213.4(k), Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 05022201, Attachment A, Factors Affecting Water Quality, and TCEQ Agreed Order Docket No. 2008-0288-MLM-E Ordering Provision No. 2.a.  
**Violation Description** Failed to comply with the terms of the approved WPAP by allowing vehicle maintenance to be performed outside the shop area, as documented during an investigation conducted on March 17, 2009. Specifically, vehicle maintenance was being conducted behind the scale house.

**Base Penalty** \$10,000

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

OR	<b>Harm</b>			Percent
	Major	Moderate	Minor	
	Actual			
	Potential		x	10%

**>> Programmatic Matrix**

	Major	Moderate	Minor	Percent
Falsification				
				0%

**Matrix Notes** Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed protective levels as a result of this violation.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 214 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,000

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$8 **Violation Final Penalty Total** \$1,500

**This violation Final Assessed Penalty (adjusted for limits)** \$1,500

## Economic Benefit Worksheet

**Respondent** AUSTIN EQUIPMENT COMPANY, LC  
**Case ID No.** 35387  
**Reg. Ent. Reference No.** RN104543780  
**Media** Edwards Aquifer  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$200	17-Mar-2009	5-Jan-2010	0.81	\$8	n/a	\$8
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 provide training to employees to ensure that vehicle maintenance is conducted only in the approved shop area. Date required is the investigation date. Final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

**TOTAL**

\$8

**Screening Date** 8-Jun-2009 **Docket No.** 2009-0918-MLM-E **PCW**  
**Respondent** AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*  
**Case ID No.** 35387 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104543780  
**Media [Statute]** Edwards Aquifer  
**Enf. Coordinator** Evette Alvarado

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer WPAP No. 05022201B, Standard Conditions No. 6

**Violation Description**

Failed to install and maintain temporary erosion and sedimentation controls, as documented during an investigation on March 17, 2009. Specifically, the investigator observed uncontained rock berms at the Salado Creek and tributary crossings, an improperly installed silt fence with holes and tears in the fabric at the Salado Creek crossing, and a torn and sagging silt fence near the 50 foot tributary buffer.

**Base Penalty**

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

OR	<b>Harm</b>			<b>Percent</b> <input type="text" value="25%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	x	<input type="text"/>	

**>> Programmatic Matrix**

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

**Matrix Notes**

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed protective levels as a result of this violation.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

One quarterly event is recommended from the investigation date (March 17, 2009) to the screening date (June 8, 2009).

**Good Faith Efforts to Comply**  Reduction

	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 x)

**Notes**

The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

## Economic Benefit Worksheet

**Respondent** AUSTIN EQUIPMENT COMPANY, LC  
**Case ID No.** 35387  
**Reg. Ent. Reference No.** RN104543780  
**Media** Edwards Aquifer  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	17-Mar-2009	5-Jan-2010	0.81	\$201	n/a	\$201

Notes for DELAYED costs

Estimated cost to install and maintain proper sediment controls. Date required is investigation date. Final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$201

**Screening Date** 8-Jun-2009 **Docket No.** 2009-0918-MLM-E **PCW**  
**Respondent** AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*  
**Case ID No.** 35387 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104543780  
**Media [Statute]** Edwards Aquifer  
**Enf. Coordinator** Evette Alvarado

**Violation Number** 4  
**Rule Cite(s)** Tex. Water Code § 26.121, 30 Tex. Admin. Code § 213.4(k), and Edwards Aquifer WPAP No. 05022201, Attachment I, Inspection and Maintenance for Best Management Practices ("BMPs")  
**Violation Description** Failed to prevent the discharge of industrial waste into or adjacent to water in the state, as documented during an investigation on March 17, 2009. Specifically, a discarded silt fence and quarried rock accumulations were observed in the bed of Salado Creek and sediment, a triangular filter dike, and quarried rock accumulations were observed in a tributary of Salado Creek.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	25%
	Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

**Matrix Notes** Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 83 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended from the investigation date (March 17, 2009) to the screening date (June 8, 2009).

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$2,500

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$20

**Violation Final Penalty Total** \$3,750

**This violation Final Assessed Penalty (adjusted for limits)** \$3,750

## Economic Benefit Worksheet

**Respondent** AUSTIN EQUIPMENT COMPANY, LC  
**Case ID No.** 35387  
**Reg. Ent. Reference No.** RN104543780  
**Media** Edwards Aquifer  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	17-Mar-2009	5-Jan-2010	0.81	\$20	n/a	\$20
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of discarded material from the tributary and creek bed, and recover sediment and rock from the tributary and creek bed. Date required is investigation date. Final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$20

**Screening Date** 8-Jun-2009 **Docket No.** 2009-0918-MLM-E **PCW**  
**Respondent** AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*  
**Case ID No.** 35387 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104543780  
**Media [Statute]** Edwards Aquifer  
**Enf. Coordinator** Evette Alvarado

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 213.4(k) and Edwards Aquifer WPAP No. 05022201B, Special Condition No. III

**Violation Description**  
 Failed to comply with the terms of the approved WPAP regarding the drainage area of the water quality pond, as documented during an investigation on April 8, 2009. Specifically, the investigator observed that there were no berms, swales, or other methods used to divide the approved 10 acre drainage area for the water quality pond from the 18 acre mining area.

**Base Penalty**

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

OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	x	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>

**>> Programmatic Matrix**

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

**Matrix Notes**  
 Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed protective levels as a result of this 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	x
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

One quarterly event is recommended from the investigation date (April 8, 2009) to the screening date (June 8, 2009).

**Good Faith Efforts to Comply**  Reduction

	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 x)

**Notes**  
 The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

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

## Economic Benefit Worksheet

**Respondent** AUSTIN EQUIPMENT COMPANY, LC  
**Case ID No.** 35387  
**Reg. Ent. Reference No.** RN104543780  
**Media** Edwards Aquifer  
**Violation No.** 5

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	\$10,000	8-Apr-2009	5-Jan-2010	0.75	\$25	\$497	\$522
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to construct berms and swales to isolate a 10 acre tract as approved in WPAP No. 05022201B. Date required is the investigation date. Final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$522

**Screening Date** 8-Jun-2009 **Docket No.** 2009-0918-MLM-E **PCW**  
**Respondent** AUSTIN EQUIPMENT COMPANY, LC *Policy Revision 2 (September 2002)*  
**Case ID No.** 35387 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104543780  
**Media [Statute]** Edwards Aquifer  
**Enf. Coordinator** Evette Alvarado

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code §§ 213.4(k), 213.5(b)(4)(D)(ii)(II) and Edwards Aquifer WPAP No. 05022201B, Permanent Pollution Abatement Measures

**Violation Description**  
 Failed to construct permanent best management practices as designed, as documented during an investigation on April 8, 2009. Specifically, the water quality pond on site was not constructed as a sedimentation and filtration basin as designed and approved, in that there was no splitter basin or outflow structure present, nor was there evidence that the pond was lined.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<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 will or could be exposed to significant amounts of pollutants that would not exceed protective levels as a result of this violation.

**Adjustment**

**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="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

One quarterly event is recommended from the investigation date (April 8, 2009) to the screening date (June 8, 2009).

**Good Faith Efforts to Comply**  Reduction

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

**Notes**  
 The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

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

## Economic Benefit Worksheet

**Respondent** AUSTIN EQUIPMENT COMPANY, LC  
**Case ID No.** 35387  
**Reg. Ent. Reference No.** RN104543780  
**Media** Edwards Aquifer  
**Violation No.** 6

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	\$10,000	8-Apr-2009	5-Jan-2010	0.75	\$25	\$497	\$522
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to construct the water quality pond as designed and approved in WPAP No. 05022201B. Date required is the investigation date. Final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$522



D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 01/08/2007 (519135)
- 2 03/10/2009 (681414)
- 3 06/04/2009 (683865)

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

Date: 01/09/2007 (519135) CN602523250  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
Description: Failure to maintain a copy of the WPAP and AST on the site.  
Self NO Classification: Minor  
Citation: 30 TAC Chapter 327 327.5(a)  
Description: Failure to immediately abate and contain spills or discharges of petroleum products.  
A small oil spill, perhaps less than one gallon, was observed near the new rock crusher assembly work area.  
Failure to immediately abate and contain spills or discharges of petroleum products.

Self NO Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
Description: Failure to maintain temporary sediment controls.  
Self NO Classification: Minor  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Description: Failure to update the storm water pollution prevention plan (SWPPP) material inventory for paint, gear oil, etc.

Date: 04/13/2007 (543456) CN602523250  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
Description: Failure to maintain a copy of the WPAP and AST on the site.  
Self NO Classification: Minor  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Description: Failure to update the storm water pollution prevention plan (SWPPP) material inventory for paint, gear oil, etc.  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.5(f)(2)(A)  
Description: Failure to notify the Austin Regional Office of a sensitive feature encountered during regulated activities.

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 AUSTIN  
EQUIPMENT COMPANY, LC;  
RN104543780**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-0918-MLM-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Austin Equipment Company, LC (“Austin Equipment”) under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Austin Equipment, represented by Duncan Norton of the law firm of Lloyd Gosselink Rochelle & Townsend, P.C. presented this agreement to the Commission.

Austin Equipment understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Austin Equipment agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Austin Equipment.

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

## FINDINGS OF FACT

1. Austin Equipment owns and operates a rock quarry located at 501 County Road 344, Jarrell, Williamson County, Texas (the "Facility").
2. Austin Equipment has caused, suffered, allowed or permitted the discharge of waste from the Facility into or adjacent to water in the state and has performed other activities in violation of TEX. WATER CODE ch. 26 or a rule, permit, or order of the Commission. The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on March 17, 2009, a TCEQ Austin Regional Office investigator documented that Austin Equipment:
  - a. Failed to immediately abate and contain spills or discharges of petroleum products. Specifically, oil stains were observed on the ground in the aboveground storage tank ("AST") area behind the scale house;
  - b. Failed to comply with the terms of the approved Edwards Aquifer Water Pollution Abatement Plan ("WPAP") by allowing vehicle maintenance to be performed outside the shop area. Specifically, vehicle maintenance was being conducted behind the scale house;
  - c. Failed to install and maintain temporary erosion and sedimentation controls. Specifically, the investigator observed uncontained rock berms at the Salado Creek and tributary crossings, an improperly installed silt fence with holes and tears in the fabric at the Salado Creek crossing, and a torn and sagging silt fence near the 50 foot tributary buffer;
  - d. Failed to prevent the discharge of industrial waste into or adjacent to water in the state. Specifically, a discarded silt fence and quarried rock accumulations were observed in the bed of Salado Creek and sediment, a triangular filter dike, and quarried rock accumulations were observed in a tributary of Salado Creek;
4. During an investigation conducted on April 8, 2009, a TCEQ Austin Regional Office investigator documented that Austin Equipment:
  - a. Failed to comply with the terms of the approved WPAP regarding the drainage area of the water quality pond. Specifically, the investigator observed that there were no berms, swales, or other methods used to divide the approved 10 acre drainage area for the water quality pond from the 18 acre mining area;

- b. Failed to construct permanent best management practices (“BMPs”) as designed. Specifically, the water quality pond on site was not constructed as a sedimentation and filtration basin as designed and approved, in that there was no splitter basin or outflow structure present, nor was there evidence that the pond was lined.
5. Austin Equipment received notice of the violations on or about May 26, 2009.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Austin Equipment is subject to the jurisdiction of the TCEQ pursuant TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Austin Equipment failed to immediately abate and contain spills or discharges of petroleum products, in violation of 30 TEX. ADMIN. CODE § 327.5(a) and TCEQ Agreed Order Docket No. 2008-0288-MLM-E, Ordering Provision No. 2.b.
3. As evidenced by Finding of Fact No. 3.b., Austin Equipment failed to comply with the terms of the approved WPAP by allowing vehicle maintenance to be performed outside the shop area, in violation of 30 TEX. ADMIN. CODE § 213.4(k), Edwards Aquifer WPAP No. 05022201, Attachment A, Factors Affecting Water Quality, and TCEQ Agreed Order Docket No. 2008-0288-MLM-E, Ordering Provision No. 2.a.
4. As evidenced by Finding of Fact No. 3.c., Austin Equipment failed to install and maintain temporary erosion and sedimentation controls, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201B, Standard Conditions No. 6.
5. As evidenced by Finding of Fact No. 3.d., Austin Equipment failed to prevent the discharge of industrial waste into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121, 30 TEX. ADMIN. CODE § 213.4(k), and Edwards Aquifer WPAP No. 05022201, Attachment I, Inspection and Maintenance for Best Management Practices (“BMPs”).
6. As evidenced by Finding of Fact No. 4.a., Austin Equipment failed to comply with the terms of the approved WPAP regarding the drainage area of the water quality pond, in violation of 30 TEX. ADMIN. CODE § 213.4(k) and Edwards Aquifer WPAP No. 05022201B, Special Condition No. III.

7. As evidenced by Finding of Fact No. 4.b., Austin Equipment failed to construct permanent BMPs as designed, in violation of 30 TEX. ADMIN. CODE §§ 213.4(k) and 213.5(b)(4)(D)(ii)(II) and Edwards Aquifer WPAP No. 05022201B, Permanent Pollution Abatement Measures.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Austin Equipment for violations of the Texas Water Code and the Texas Health & 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.

An administrative penalty in the amount of twenty thousand two hundred fifty dollars (\$20,250.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Austin Equipment paid two thousand one hundred dollars (\$2,100.00) of the administrative penalty. The remaining amount of eighteen thousand one hundred fifty dollars (\$18,150.00) of the administrative penalty shall be payable in 11 monthly payments of one thousand six hundred fifty dollars (\$1,650.00) each. The first monthly payment shall be paid within one month after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment.

If Austin Equipment fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Austin Equipment's failure to meet the payment schedule of this Agreed Order constitutes the failure by Austin Equipment to timely and satisfactorily comply with all of the terms of this Agreed Order.

### **ORDERING PROVISIONS**

1. Austin Equipment is assessed an administrative penalty in the amount of twenty thousand two hundred fifty dollars (\$20,250.00) as set forth in Conclusion of Law No. 8 above. The payment of this administrative penalty and Austin Equipment's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.

2. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “re: Austin Equipment Company, LC, Docket No. 2009-0918-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

3. Austin Equipment shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Austin Equipment shall:
    - i. Remediate, in accordance with 30 TEX. ADMIN. CODE § 327.5(a), all areas at the Facility where stained soils were observed, including but not limited to the area behind the scale house and the area where the ASTs are located.
    - ii. Submit a report which includes a summary of remediation activities that took place, performed at the Facility pursuant to Ordering Provision no. 3.a.i., above, confirming that all contaminated soil at the Facility has been properly removed and remediated in accordance with 30 TEX. ADMIN. CODE § 327.5(a). Remediation activities will address all areas where stained soils were observed in the area behind the scale house and in the AST area. The report shall include documentation that contaminated soil has been disposed of in an authorized manner;
    - iii. Update operational guidance and conduct employee training to ensure that vehicle maintenance is conducted in authorized locations;
    - iv. Repair the rock berms at the tributary crossing and the silt fences at the 50 foot tributary buffer;
    - v. Submit a plan to permanently stabilize the Salado Creek crossing;
    - vi. Remove and properly dispose of the discarded material, sediment, and quarried rock accumulations from Salado Creek and its tributary;

- vii. Install berms and swales to establish a 10 acre drainage area for the water quality pond, in accordance with WPAP No. 05022201B; and
- viii. Either:
  - A. Complete construction of the water quality (“WQ”) pond as designed and approved, in accordance with WPAP No.05022201B and RG-348, “Complying with the Edwards Aquifer Rules – Technical Guidance on Best Management Practices” ; or
  - B. Submit a WPAP permit amendment or modification application to TCEQ which redesigns the WQ pond, in which case construction shall be completed within 90 days of approval of such application. If such WPAP permit amendment or modification application to TCEQ is denied, construction of the WQ pond shall be completed within 30 days of such denial, in accordance with WPAP No.05022201B and RG-348.
- b. Within 45 days after the effective date of this Agreed Order, Austin Equipment shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. above.

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.”

Austin Equipment shall submit copies of documentation necessary to demonstrate compliance with these 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:

Carolyn Runyon, Water Section Manager  
Texas Commission on Environmental Quality  
Austin Regional Office  
2800 S. IH 35, Suite 100  
Austin, Texas 78704-5712

4. The provisions of this Agreed Order shall apply to and be binding upon Austin Equipment. Austin Equipment is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If Austin Equipment fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Austin Equipment's failure to comply is not a violation of this Agreed Order. Austin Equipment shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Austin Equipment shall notify the Executive Director within seven days after Austin Equipment 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 Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Austin Equipment shall be made in writing to the Executive Director. Extensions are not effective until Austin Equipment 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, 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 Austin Equipment has not complied with one or more of the terms or conditions in this Agreed Order.

8. This Agreed Order shall terminate five years from its effective date or upon compliance with all terms and conditions set forth in this Agreed Order, whichever is later.
9. This Agreed Order, issued by the Commission, shall not be admissible against Austin Equipment 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.
10. 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.
11. 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 this Agreed Order to Austin Equipment, or three days after the date on which the Commission mails notice of this Agreed Order to Austin Equipment, 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

5/3/2010

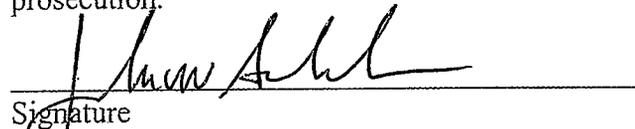
\_\_\_\_\_  
Date

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

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

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

  
\_\_\_\_\_  
Signature

2-18-10  
\_\_\_\_\_  
Date

John W. Schuler

Member, Superior Crushed Stone, L.C.  
(Director of Austin Equipment Company, LC)

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of Austin Equipment  
Company, LC

\_\_\_\_\_  
Title