

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-0036-IWD-E **TCEQ ID:** RN102707833 **CASE NO.:** 38948  
**RESPONDENT NAME:** TXI Operations, LP

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input 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 checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> TXI Operations, 1522 Mansfield Webb Road, Arlington, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Ready-mixed concrete plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on May 31, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ SEP Coordinator:</b> Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732  <b>TCEQ Enforcement Coordinator:</b> Mr. Thomas Jecha, P.G., Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Laurie Baves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Leo Faciane, Vice President, Environmental Services, TXI Operations, LP, 1341 West Mockingbird Lane, Dallas, Texas 75247  Mr. Jamie B. Rogers, Vice President, Consumer Products, TXI Operations, LP, 1341 West Mockingbird Lane, Dallas, Texas 75247  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 2, 2009</p> <p><b>Date of NOE Relating to this Case:</b> December 17, 2009</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WATER</b></p> <p>1) Failure to comply with the permitted effluent limitations for total suspended solids and pH [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110183, Permit Requirements Part III Section A].</p> <p>2) Failure to timely submit and/or complete effluent monitoring results at the intervals specified in the permit. Specifically, the annual metals results for Outfalls 001 and 002 for the monitoring period ending January 31, 2009, were not submitted by the 20th day of the month following the monitoring period, and the monthly maximum pH results for Outfalls 001 and 002 for the monitoring period ending June 30, 2009, were not included on the submitted discharge monitoring reports ("DMRs") [30 TEX. ADMIN. CODE § 305.125(17) and TPDES General Permit No. TXG110183, Standard Permit Conditions Part IV No. 7(f)].</p>	<p><b>Total Assessed:</b> \$9,180</p> <p><b>Total Deferred:</b> \$1,836  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$3,672</p> <p><b>Total Paid to General Revenue:</b> \$3,672</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 the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Submitted the annual metals results for Outfalls 001 and 002 for the monitoring period ending January 31, 2009 on December 21, 2009; and</p> <p>b. Submitted revised DMRs with complete monthly maximum pH results for Outfalls 001 and 002 for the monitoring period ending June 30, 2009 on December 21, 2009.</p> <p><b>Ordering Provisions:</b></p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all monthly and annual effluent monitoring results are properly accomplished and submitted at the intervals specified in the permit; and</p> <p>b. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a. and the permitted effluent limitations of TPDES General Permit No. TXG110183, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Attachment A  
Docket Number: 2010-0036-IWD-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** TXI Operations, LP  
**Penalty Amount:** Seven Thousand Three Hundred Forty-Four Dollars (\$7,344)  
**SEP Offset Amount:** Three Thousand Six Hundred Seventy-Two Dollars (\$3,672)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Keep Texas Beautiful - Stop Trashing Texas Program  
**Location of SEP:** Tarrant County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to *Keep Texas Beautiful* for the *Stop Trashing Texas* project as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP funds will pay for the labor and disposal costs associated with cleanup of unauthorized trash dumps by supplying project coordination, labor, supplies, and materials for clean up events statewide. SEP funds used for this purpose shall be limited to the actual direct costs for the specific purpose necessary to meet the requirements of the SEP and no portion of the SEP funds will be spent on administrative costs related to this portion of the SEP. Trash dump cleanups may be coordinated with waste collection facilities and/or local governments to employ heavy machinery for the removal of large waste items. To the maximum extent possible, cleanups shall be accomplished with the use of volunteers from community groups, private companies, schools, and youth organizations. SEP Funds may be used for activities. This project will be administered in accordance with federal, state, and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by removing unauthorized trash dumps and providing for the proper disposal of debris and waste, reducing the potential health threats associated with illegally dumped wastes, helping rid communities of hazardous contaminants that may leach into the soil and water.



C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Keep Texas Beautiful  
Attention: Anne Cunic, Affiliate Services Manager  
8850 Business Park Dr., Ste. 200  
Austin, TX 78759

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount. In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

Texas Commission on Environmental Quality  
Office of Legal Services  
Attention: SEP Coordinator, MC 175  
P.O. Box 13088  
Austin, Texas 78711-3088



**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	21-Dec-2009	Screening	6-Jan-2010	EPA Due	
	PCW	7-Jan-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	TXI Operations, LP
Reg. Ent. Ref. No.	RN102707833
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38948	No. of Violations	3
Docket No.	2010-0036-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Jecha, P.G.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	Subtotal 1	\$5,400
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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>	70.0% Enhancement	Subtotals 2, 3, & 7	\$3,780
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Notes: Penalty enhanced for 14 self-reported effluent violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	Subtotal 5	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$238  
 Approx. Cost of Compliance \$2,300  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	Final Subtotal	\$9,180
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	Adjustment	
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Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes:

Final Penalty Amount \$9,180

<b>STATUTORY LIMIT ADJUSTMENT</b>	Final Assessed Penalty	\$9,180
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<b>DEFERRAL</b>	20.0% Reduction	Adjustment	-\$1,836
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Reduces the Final Assessed Penalty by the Indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>		\$7,344
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Screening Date 6-Jan-2010

Docket No. 2010-0036-IWD-E

PCW

Respondent TXI Operations, LP

Policy Revision 2 (September 2002)

Case ID No. 38948

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102707833

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

### 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)	14	70%
	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 judgments 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) 70%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Penalty enhanced for 14 self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 70%

**Screening Date:** 6-Jan-2010      **Docket No.** 2010-0036-IWD-E      **PCW**  
**Respondent:** TXI Operations, LP      *Policy Revision 2 (September 2002)*  
**Case ID No.:** 38948      *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.:** RN102707833  
**Media [Statute]:** Water Quality  
**Enf. Coordinator:** Thomas Jecha, P.G.  
**Violation Number:** 1  
**Rule Cite(s):** Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110183, Permit Requirements Part III Section A  
**Violation Description:** Failed to comply with the permitted effluent limitations, as shown in the attached table.  
**Base Penalty:** \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

  
**>> Programmatic Matrix**  

Falsification	Major	Moderate	Minor	Percent
				0%

  
**Matrix Notes:** Total suspended solids and pH were considered to determine whether the discharged amounts of pollutants exceeded protective levels. As a result of these discharges, 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.  
**Adjustment:** \$9,000

\$1,000

**Violation Events**  
 Number of Violation Events: 5      153 Number of violation days  

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

  
**Violation Base Penalty:** \$5,000  
 Five quarterly events are recommended. Three quarterly events at Outfall 001 and two quarterly events at Outfall 002.

**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:** \$5,000

**Economic Benefit (EB) for this violation**      **Statutory Limit Test**  
**Estimated EB Amount:** \$216      **Violation Final Penalty Total:** \$8,500  
**This violation Final Assessed Penalty (adjusted for limits):** \$8,500

## Economic Benefit Worksheet

Respondent TXI Operations, LP  
 Case ID No. 38948  
 Reg. Ent. Reference No. RN102707833  
 Media Water Quality  
 Violation No. 1

Percent Interest:	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$2,000	31-Aug-2008	29-Oct-2010	2.16	\$216	n/a	\$216

Notes for DELAYED costs

Estimated cost to evaluate causes of noncompliances and make necessary adjustments to the Facility. The date required is the first date of noncompliance and the 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

\$2,000

TOTAL

\$216

<p><b>Screening Date:</b> 6-Jan-2010</p> <p><b>Respondent:</b> TXI Operations, LP</p> <p><b>Case ID No.:</b> 38948</p> <p><b>Reg. Ent. Reference No.:</b> RN102707833</p> <p><b>Media (Statute):</b> Water Quality</p> <p><b>Enf. Coordinator:</b> Thomas Jecha, P.G.</p> <p><b>Violation Number:</b> 2</p> <p><b>Rule Cite(s):</b> 30 Tex. Admin. Code § 305.125(17) and TPDES General Permit No. TXG1101B3, Standard Permit Conditions Part IV No. 7(f)</p> <p><b>Violation Description:</b> Failed to timely submit effluent monitoring results at the intervals specified in the permit. Specifically, the annual metals results for Outfalls 001 and 002 for the monitoring period ending January 31, 2009, were not submitted by the 20th day of the month following the monitoring period.</p>	<p style="text-align: right;"><b>Docket No.</b> 2010-0036-IWD-E</p> <p style="text-align: right;"><b>PCW</b> <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2009</small></p>															
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Major	Moderate	Minor														
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<p><input type="text" value="\$100"/></p>																
<p><b>Violation Events</b></p> <p>Number of Violation Events: <input type="text" value="2"/>      <input type="text" value="304"/> Number of violation days</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="6" style="width:10%; text-align: center; vertical-align: middle;"><i>mark only one with an x</i></td> <td style="text-align: center;">daily</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">weekly</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">monthly</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">quarterly</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">semiannual</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">annual</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">single event</td> <td style="text-align: center;"><input type="text" value="x"/></td> </tr> </table> <p style="text-align: right;"><b>Violation Base Penalty</b> <input type="text" value="\$200"/></p> <p style="text-align: center; border: 1px solid black; padding: 5px;">Two single events are recommended.</p>		<i>mark only one with an x</i>	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	<input type="text" value="x"/>
<i>mark only one with an x</i>	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	<input type="text" value="x"/>															
<p><b>Good Faith Efforts to Comply</b>      <input type="text" value="0.0%"/> Reduction      <input type="text" value="\$0"/></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDPRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;"><input type="text" value="x"/></td> <td style="text-align: center;"><input type="text" value="(mark with x)"/></td> </tr> </table> <p><b>Notes:</b> The Respondent does not meet the good faith criteria for this violation.</p> <p style="text-align: right;"><b>Violation Subtotal</b> <input type="text" value="\$200"/></p>			Before NOV	NOV to EDPRP/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)"/>			
	Before NOV	NOV to EDPRP/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)"/>														
<p><b>Economic Benefit (EB) for this violation</b>      <b>Statutory Limit Test</b></p> <p>Estimated EB Amount <input type="text" value="\$19"/>      Violation Final Penalty Total <input type="text" value="\$340"/></p> <p style="text-align: right;"><b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$340"/></p>																

## Economic Benefit Worksheet

Respondent TXI Operations, LP  
 Case ID No. 38948  
 Reg. Ent. Reference No. RN102707833  
 Media Water Quality  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	20-Feb-2009	21-Dec-2009	0.83	\$4	n/a	\$4
Training/Sampling	\$200	20-Feb-2009	30-Aug-2010	1.52	\$15	n/a	\$15
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 prepare and submit the reports and update operational guidance and conduct employee training to ensure that all monitoring results are complete and timely submitted. The date required is the date the annual monitoring results were due. The final dates are the date the data were submitted and the expected date of compliance with the employee training requirement.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$19

<p><b>Screening Date</b> 6-Jan-2010</p> <p><b>Respondent</b> TXI Operations, LP</p> <p><b>Case ID No.</b> 38948</p> <p><b>Reg. Ent. Reference No.</b> RN102707833</p> <p><b>Media [Statute]</b> Water Quality</p> <p><b>Enf. Coordinator</b> Thomas Jecha, P.G.</p> <p><b>Violation Number</b> 3</p> <p><b>Rule Cite(s)</b> 30 Tex. Admin. Code § 305.125(17) and TPDES General Permit No. TXG110183, Standard Permit Conditions Part IV No. 7(f)</p> <p><b>Violation Description</b> Failed to submit complete effluent monitoring results at the intervals specified in the permit. Specifically, monthly maximum pH results for Outfalls 001 and 002 for the monitoring period ending June 30, 2009, were not included on the discharge monitoring reports.</p>	<p><b>Docket No.</b> 2010-0036-IWD-E</p> <p style="text-align: right;"><b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision October 30, 2009</i></p>															
<b>Base Penalty</b> \$10,000																
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																
<p><b>OR</b></p>	<p style="text-align: center;"><b>Harm</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;"></td> <td style="width:20%;">Major</td> <td style="width:20%;">Moderate</td> <td style="width:20%;">Minor</td> <td style="width:30%;"></td> </tr> <tr> <td><b>Actual</b></td> <td></td> <td></td> <td></td> <td><b>Percent</b> 0%</td> </tr> <tr> <td><b>Potential</b></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>		Major	Moderate	Minor		<b>Actual</b>				<b>Percent</b> 0%	<b>Potential</b>				
	Major	Moderate	Minor													
<b>Actual</b>				<b>Percent</b> 0%												
<b>Potential</b>																
<b>&gt;&gt; Programmatic Matrix</b>																
<p><b>Matrix Notes</b></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;"></td> <td style="width:20%;">Major</td> <td style="width:20%;">Moderate</td> <td style="width:20%;">Minor</td> <td style="width:30%;"></td> </tr> <tr> <td><b>Falsification</b></td> <td></td> <td></td> <td style="text-align: center;">x</td> <td><b>Percent</b> 1%</td> </tr> </table> <p style="text-align: center;">Less than 30% of the rule requirement was not met.</p> <p style="text-align: right;"><b>Adjustment</b> \$9,900</p>		Major	Moderate	Minor		<b>Falsification</b>			x	<b>Percent</b> 1%					
	Major	Moderate	Minor													
<b>Falsification</b>			x	<b>Percent</b> 1%												
<b>Adjustment</b> \$100																
<b>Violation Events</b>																
<p><b>Number of Violation Events</b> 2</p> <p><b>Number of violation days</b> 155</p> <p><i>mark only one with an x</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table> <p style="text-align: center;">Two single events are recommended.</p>	daily		weekly		monthly		quarterly		semiannual		annual		single event	x	<p><b>Violation Base Penalty</b> \$200</p>	
daily																
weekly																
monthly																
quarterly																
semiannual																
annual																
single event	x															
<b>Violation Subtotal</b> \$200																
<b>Good Faith Efforts to Comply</b>																
<p><b>Extraordinary</b></p> <p><b>Ordinary</b></p> <p><b>N/A</b></p> <p><b>Notes</b></p>	<p style="text-align: center;">0.0% Reduction</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"></td> <td style="width:50%;">Before NOV</td> <td style="width:50%;">NOV to EDRP/ Settlement Offer</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table> <p style="text-align: center;">The Respondent does not meet the good faith criteria for this violation.</p>		Before NOV	NOV to EDRP/ Settlement Offer					x	(mark with x)						
	Before NOV	NOV to EDRP/ Settlement Offer														
	x	(mark with x)														
<b>Violation Subtotal</b> \$0																
<b>Economic Benefit (EB) for this violation</b>																
<p><b>Estimated EB Amount</b> \$0</p>	<p><b>Statutory Limit Test</b></p> <p><b>Violation Final Penalty Total</b> \$340</p> <p><b>This violation Final Assessed Penalty (adjusted for limits)</b> \$340</p>															

## Economic Benefit Worksheet

**Respondent:** TXI Operations, LP  
**Case ID No.:** 38948  
**Reg. Ent. Reference No.:** RN102707833  
**Media:** Water Quality  
**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**

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

Notes for DELAYED costs

Delayed costs are included in the economic benefit for Violation No. 2.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/reporting/sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

	\$0	<b>TOTAL</b>	
	\$0		\$0

EFFLUENT VIOLATION TABLE		
TXI OPERATIONS, LP		
TPDES General Permit No. TXG110183		
Docket No. 2010-0036-IWD-E		
Outfall 001		
	TSS Daily Max. Conc.	pH Max. Conc.
Months	Limit = 65 mg/L	Limit = 9 s.u.
8/31/2008	c	9.2
3/31/2009	66	c
6/30/2009	c	9.3
Outfall 002		
3/31/2009	92	c
6/30/2009	170	c
mg/L = milligrams per liter		c = compliant
TSS = total suspended solids		max. = maximum
conc. = concentration		s.u. = standard unit



# Compliance History Report

Customer/Respondent/Owner-Operator: CN600125157 TXI Operations, LP Classification: AVERAGE Rating: 2.97  
Regulated RN102707833 TXI OPERATIONS Classification: AVERAGE Site Rating:0.65  
ID Number(s): WASTE WATER GENERAL PERMIT PERMIT TXG110183  
PETROLEUM STORAGE TANK REGISTRATION 50843  
REGISTRATION  
Location: 1522 MANSFIELD WEBB RD, ARLINGTON, TARRANT CO.  
TX  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: January 05, 2010  
Agency Decision Requiring Compliance Enforcement  
Compliance Period: January 05, 2005 to January 05, 2010

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

Name: Thomas Jecha, P.G. Phone: 239 - 2576

## 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

Rating Date: 9/1/2009 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 01/20/2005 (391504)
  - 2 01/20/2005 (391505)
  - 3 01/20/2005 (391506)
  - 4 03/22/2005 (391503)
  - 5 04/22/2005 (428964)
  - 6 04/22/2005 (428965)
  - 7 07/21/2005 (428966)
  - 8 07/21/2005 (428967)
  - 9 07/21/2005 (428968)
  - 10 10/19/2005 (495086)
  - 11 10/19/2005 (495087)
  - 12 10/19/2005 (495088)
  - 13 01/19/2006 (495089)
  - 14 01/19/2006 (495090)

15	01/19/2006	(495091)
16	03/20/2006	(495085)
17	04/17/2006	(507563)
18	04/17/2006	(507564)
19	07/24/2006	(529756)
20	07/24/2006	(529757)
21	07/24/2006	(529758)
22	10/30/2006	(552701)
23	10/30/2006	(552702)
24	10/30/2006	(552703)
25	01/29/2007	(552704)
26	01/29/2007	(552705)
27	01/29/2007	(552706)
28	04/25/2007	(590997)
29	04/25/2007	(590998)
30	05/07/2007	(590996)
31	05/22/2007	(590999)
32	08/24/2007	(606467)
33	08/24/2007	(606468)
34	08/24/2007	(606469)
35	09/24/2007	(606470)
36	11/01/2007	(634882)
37	11/13/2007	(634883)
38	12/18/2007	(634884)
39	01/23/2008	(634885)
40	02/25/2008	(678452)
41	04/03/2008	(678453)
42	06/27/2008	(697393)
43	06/27/2008	(697394)
44	06/27/2008	(697395)
45	07/25/2008	(697396)
46	08/22/2008	(719095)
47	09/19/2008	(719096)
48	10/16/2008	(719097)
49	11/17/2008	(734277)
50	01/19/2009	(734278)
51	01/22/2009	(734276)
52	01/23/2009	(734279)
53	03/19/2009	(757519)
54	04/21/2009	(757520)
55	05/26/2009	(774135)
56	06/12/2009	(774136)
57	12/17/2009	(778224)

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

Date:	02/28/2005	(391503)	CN600125157
Self	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	07/31/2005	(495086)	CN600125157
Self	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		

Date: 09/30/2005 (495088) CN600125157  
Self YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter  
Date: 01/31/2006 (507563) CN600125157  
Self YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date 01/31/2007 (590996) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date 03/31/2007 (590998) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date 06/30/2007 (606468) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 07/31/2007 (606469) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 08/31/2007 (606470) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 03/31/2008 (697393) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 05/31/2008 (697395) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 08/31/2008 (719096) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 03/31/2009 (757520) CN600125157  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 06/30/2009 CN600125157

Self Report? YES

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

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  
TXI OPERATIONS, LP  
RN102707833**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-0036-IWD-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 TXI Operations, LP ("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 ready-mixed concrete plant at 1522 Mansfield Webb Road in Arlington, Tarrant County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 December 22, 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 Nine Thousand One Hundred Eighty Dollars (\$9,180) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Six Hundred Seventy-Two Dollars (\$3,672) of the administrative penalty and One Thousand Eight Hundred Thirty-Six Dollars

(\$1,836) 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. Three Thousand Six Hundred Seventy-Two Dollars (\$3,672) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. Submitted the annual metals results for Outfalls 001 and 002 for the monitoring period ending January 31, 2009 on December 21, 2009; and
  - b. Submitted revised discharge monitoring reports ("DMR") with complete monthly maximum pH results for Outfalls 001 and 002 for the monitoring period ending June 30, 2009 on December 21, 2009.
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 Facility, the Respondent is alleged to have:

1. Failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110183, Permit Requirements Part III Section A, as documented during a record review conducted on October 2, 2009 and shown in the following violation table:

EFFLUENT VIOLATION TABLE		
Outfall 001		
	TSS Daily Max Conc	pH Max Conc
Months	Limit - 65 mg/L	Limit - 9 s.u.
8/31/2008	c	9.2
3/31/2009	66	c
6/30/2009	c	9.3
Outfall 002		
3/31/2009	92	c
6/30/2009	170	c
mg/L = milligrams per liter		c = compliant
TSS = total suspended solids		max. = maximum
conc. = concentration		s.u. = standard unit

2. Failed to timely submit and/or complete effluent monitoring results at the intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE § 305.125(17) and TPDES General Permit No. TXG110183, Standard Permit Conditions Part IV No. 7(f), as documented during a record review conducted on October 2, 2009. Specifically, the annual metals results for Outfalls 001 and 002 for the monitoring period ending January 31, 2009, were not submitted by the 20th day of the month following the monitoring period, and the monthly maximum pH results for Outfalls 001 and 002 for the monitoring period ending June 30, 2009, were not included on the submitted DMRs.

### 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: TXI Operations, LP, Docket No. 2010-0036-IWD-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Three Thousand Six Hundred Seventy-Two Dollars (\$3,672) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all monthly and annual effluent monitoring results are properly accomplished and submitted at the intervals specified in the permit; and
  - b. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 3.a. and the permitted effluent limitations of TPDES General Permit No. TXG110183, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. 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 fines and imprisonment for knowing violations."

The certification shall be submitted 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:

Water Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

4. 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 Facility operations referenced in this Agreed Order.

5. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. 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 Szolli  
\_\_\_\_\_  
For the Executive Director

4/29/2010  
\_\_\_\_\_  
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.

JBR  
\_\_\_\_\_  
Signature

3/24/2010  
\_\_\_\_\_  
Date

Jamie B. Rogers  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
TXI Operations, LP

VP-Consumer Products  
\_\_\_\_\_  
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.

Attachment A  
Docket Number: 2010-0036-IWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

<b>Respondent:</b>	TXI Operations, LP
<b>Penalty Amount:</b>	Seven Thousand Three Hundred Forty-Four Dollars (\$7,344)
<b>SEP Offset Amount:</b>	Three Thousand Six Hundred Seventy-Two Dollars (\$3,672)
<b>Type of SEP:</b>	Pre-approved
<b>Third-Party Recipient:</b>	Keep Texas Beautiful - Stop Trashing Texas Program
<b>Location of SEP:</b>	Tarrant County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. **Project Description**

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to *Keep Texas Beautiful* for the *Stop Trashing Texas* project as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP funds will pay for the labor and disposal costs associated with cleanup of unauthorized trash dumps by supplying project coordination, labor, supplies, and materials for clean up events statewide. SEP funds used for this purpose shall be limited to the actual direct costs for the specific purpose necessary to meet the requirements of the SEP and no portion of the SEP funds will be spent on administrative costs related to this portion of the SEP. Trash dump cleanups may be coordinated with waste collection facilities and/or local governments to employ heavy machinery for the removal of large waste items. To the maximum extent possible, cleanups shall be accomplished with the use of volunteers from community groups, private companies, schools, and youth organizations. SEP Funds may be used for activities. This project will be administered in accordance with federal, state, and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by removing unauthorized trash dumps and providing for the proper disposal of debris and waste, reducing the potential health threats associated with illegally dumped wastes, helping rid communities of hazardous contaminants that may leach into the soil and water.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Keep Texas Beautiful  
Attention: Arne Cunic, Affiliate Services Manager  
8850 Business Park Dr., Ste. 200  
Austin, TX 78759

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount. In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

Texas Commission on Environmental Quality  
Office of Legal Services  
Attention: SEP Coordinator, MC 175  
P.O. Box 13088  
Austin, Texas 78711-3088

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

