

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-0511-MLM-E **TCEQ ID:** RN105893531 **CASE NO.:** 39425

RESPONDENT NAME: Capitol Products, Inc.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" 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>SITE WHERE VIOLATION(S) OCCURRED: Capitol Products, 7531 North Interstate Highway 35 ("IH 35"), Jarrell, Williamson County</p> <p>TYPE OF OPERATION: Concrete block plant and cut stone site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on December 30, 2009, alleging that an unknown construction company was allowing mud to run off the site and trucks were tracking mud onto the access road of IH 35. An additional complaint was received on February 23, 2010, alleging that construction was being conducted without authorization. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Complaint were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 19, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Jose J. Espinoza, President, Capitol Products, Inc., P.O. Box 752, Jarrell, Texas 76537 West Short & Associates, P.C., Registered Agent, Capitol Products, Inc., 313 West 10th Street, Georgetown, Texas 78626 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: December 30, 2009 and February 23, 2010</p> <p>Date of Investigation Relating to this Case: January 13, 2010</p> <p>Date of NOV/NOE Relating to this Case: March 12, 2010 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>1) Failure to obtain authorization prior to the start of construction of a concrete block plant. Specifically, during the investigation it was observed that the concrete block plant had been constructed without prior authorization [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p> <p>WATER</p> <p>2) Failure to obtain authorization to discharge storm water associated with construction activities. Specifically, during the investigation it was observed that the concrete block plant had been constructed without prior authorization [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p> <p>3) Failure to obtain authorization to discharge storm water associated with industrial activities. Specifically, during the investigation it was observed that the cut stone site was being operated without authorization [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p>Total Assessed: \$6,000</p> <p>Total Deferred: \$1,200 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$4,800</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. Submitted a Notice of Intent ("NOI") to the TCEQ on March 2, 2010 and obtained authorization under the Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit No. TXR15PO70 on March 8, 2010;</p> <p>b. Submitted a NOI to the TCEQ on March 2, 2010 and obtained authorization under the TPDES Multi-Sector General Permit No. TXR05Z171 on March 4, 2010; and</p> <p>c. Submitted a New Source Review ("NSR") permit application on March 24, 2010.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the NSR permit application within 30 days after the date of such requests, or by any other deadline specified in writing; and</p> <p>b. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance.</p>

Additional ID No(s): 92140, TXR15PO70, TXR05Z171



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	22-Mar-2010	Screening	30-Mar-2010	EPA Due	
	PCW	7-Apr-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Capitol Products, Inc.
Reg. Ent. Ref. No.	RN105893531
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39425	No. of Violations	3
Docket No.	2010-0511-MLM-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,000
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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.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change recommended due to Compliance History.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,000
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$265
Approx. Cost of Compliance	\$5,525

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$6,000

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,000
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,200
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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.

PAYABLE PENALTY	\$4,800
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Screening Date 30-Mar-2010

Docket No. 2010-0511-MLM-E

PCW

Respondent: Capitol Products, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39425

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN105893531

Media [Statute] Air

Enf. Coordinator: Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No change recommended due to Compliance History.

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

Screening Date: 30-Mar-2010

Docket No: 2010-0511-MLM-E

PCW

Respondent: Capitol Products, Inc.

Policy Revision 2 (September 2002)

Case ID No: 39425

PCW Revision October 30, 2008

Reg. Ent. Reference No: RN105893631

Media [Statute] Air

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description Failed to obtain authorization prior to the start of construction of a concrete block plant. Specifically, during the investigation it was observed that the concrete block plant had been constructed without prior authorization.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			X		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 Number of violation days 70

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

Violation Base Penalty \$3,000

Three monthly events are recommended from the period of January 13, 2010 (date of investigation) to March 24, 2010 (date permit application was submitted)

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$247

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

Economic Benefit Worksheet

Respondent: Capitol Products, Inc.
Case ID No.: 39425
Reg. Ent. Reference No.: RN105893531
Media: Air
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				0.00	\$0	n/a	\$0
Permit Costs	\$4,000	13-Jan-2010	8-Apr-2011	1.23	\$247	n/a	\$247
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a permit. Date required is the investigation date. Final date is the projected 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

\$4,000

TOTAL

\$247

Screening Date 30-Mar-2010

Docket No: 2010-0511-MLM-E

PCW

Respondent Capital Products, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39425

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105893531

Media [Statute] Air

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)

Violation Description

Failed to obtain authorization to discharge storm water associated with construction activities. Specifically, during the investigation it was observed that the concrete block plant had been constructed without prior authorization.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 Number of violation days 48

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

Violation Base Penalty \$2,000

Two monthly events are recommended from the period of January 13, 2010 (date of investigation) to March 8, 2010 (date of compliance).

Good Faith Efforts to Comply

25.0% Reduction

\$500

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

Notes

The Respondent achieved compliance on March 8, 2010.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$1,500

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

Economic Benefit Worksheet

Respondent: Capitol Products, Inc.
Case ID No.: 39425
Reg. Ent. Reference No.: RN105893531
Media: Air
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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$525	13-Jan-2010	8-Mar-2010	0.15	\$4	n/a	\$4
Other (as needed)	\$2,000	13-Jan-2010	8-Mar-2010	0.15	\$15	n/a	\$15

Notes for DELAYED costs

Estimated cost associated with preparing, submitting, and obtaining authorization and developing and implementing a storm water pollution prevention plan. Date required is the investigation date. Final date is the 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

\$2,525

TOTAL

\$19

Screening Date 30-Mar-2010

Docket No. 2010-0511-MLM-E

PCW

Respondent Capitol Products, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39425

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN105893531

Media [Statute] Air

Enf. Coordinator Cheryl Thompson

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)

Violation Description

Failed to obtain authorization to discharge storm water associated with industrial activities. Specifically, during the investigation it was observed that the cut stone site was being operated without authorization.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

50 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two monthly events are recommended from the period of January 13, 2010 (date of investigation) to March 4, 2010 (date of compliance)

Good Faith Efforts to Comply

25.0% Reduction

\$500

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

Notes

The Respondent achieved compliance on March 4, 2010.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,500

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

Economic Benefit Worksheet

Respondent: Capitol Products, Inc.
Case ID No.: 39425
Reg. Ent. Reference No.: RN105893531
Media: Air
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
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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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation #2.

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

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603643750 Capitol Products, Inc. Classification: Rating:
Regulated Entity: RN105893531 CAPITOL PRODUCTS Classification: Site Rating:
ID Number(s): STORMWATER PERMIT TXR15PO70
STORMWATER PERMIT TXR05Z171
AIR NEW SOURCE PERMITS REGISTRATION 92140
Location: 7531 N IH 35, JARRELL, TX, 76537
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History: April 09, 2010
Agency Decision Requiring Compliance: Enforcement
Compliance Period: March 29, 2005 to March 29, 2010

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

Name: Cheryl Thompson Phone: (817) 588-5886

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/ 1/2001 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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CAPITOL PRODUCTS, INC.
RN105893531**

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§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-0511-MLM-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 Capitol Products, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and 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 a concrete block plant and cut stone site located at 7531 North Interstate Highway 35 in Jarrell, Williamson County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
4. 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.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 17, 2010.
6. 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.

7. An administrative penalty in the amount of Six Thousand Dollars (\$6,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Eight Hundred Dollars (\$4,800) of the administrative penalty and One Thousand Two Hundred Dollars (\$1,200) 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.
8. 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.
9. 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.
10. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
 - a. Submitted a Notice of Intent to the TCEQ on March 2, 2010 and obtained authorization under the Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15PO70 on March 8, 2010;
 - b. Submitted a Notice of Intent to the TCEQ on March 2, 2010 and obtained authorization under the TPDES Multi-Sector General Permit ("MSGP") No. TXR05Z171 on March 4, 2010; and
 - c. Submitted a New Source Review ("NSR") permit application on March 24, 2010.
11. 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.
12. 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.
13. 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 of the Site, the Respondent is alleged to have:

1. Failed to obtain authorization prior to the start of construction of a concrete block plant, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on January 13, 2010. Specifically, during the investigation it was observed that the concrete block plant had been constructed without prior authorization.

2. Failed to obtain authorization to discharge storm water associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on January 13, 2010. Specifically, during the investigation it was observed that the concrete block plant had been constructed without prior authorization.
3. Failed to obtain authorization to discharge storm water associated with industrial activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on January 13, 2010. Specifically, during the investigation it was observed that the cut stone site was being operated without authorization.

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 7 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: Capitol Products, Inc., Docket No. 2010-0511-MLM-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the NSR permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
 - b. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, 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:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. 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.
5. 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.
6. 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.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted

by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

8. 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 Szalun
For the Executive Director

8/13/2010
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.

Jose J Espinoza
Signature

7/20/10
Date

JOSE J ESPINOZA
Name (Printed or typed)
Authorized Representative of
Capitol Products, Inc.

President
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.