

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2010-1092-MLM-E **TCEQ ID:** RN101974335 **CASE NO.:** 39980
RESPONDENT NAME: RTI Hot Mix, Ltd.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: RTI South Asphalt Plant, 1101 Farm-to-Market Road 2770, Buda, Hays County</p> <p>TYPE OF OPERATION: Asphalt plant with 16 aboveground storage tanks ("ASTs")</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 8, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Chuck Fuller, President, RTI Hot Mix, Ltd., Post Office Box 2989, Pflugerville, Texas 78691 Mr. Lance M. Townsend, General Manager, RTI Hot Mix, Ltd., Post Office Box 2989, Pflugerville, Texas 78691 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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 8, 2010</p> <p>Date of NOV/NOE Relating to this Case: May 25, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failed to obtain a modification of an Edwards Aquifer AST Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed sixteen ASTs and two AST containments constructed prior to obtaining approval of an AST Facility Plan modification [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p> <p>WASTE</p> <p>1) Failed to register with the agency two ASTs in existence on or after September 1, 1989. Specifically, the investigator documented a 6,000 gallon on-road diesel tank and a 5,000 gallon off-road diesel tank that contained fuel and were not registered [30 TEX. ADMIN. CODE § 334.127(a)(1)].</p> <p>2) Failed to make available to the common carrier a valid current TCEQ registration certificate before accepting delivery of a regulated substance into the ASTs. Specifically, one fuel delivery was accepted without a valid registration certificate [30 TEX. ADMIN. CODE § 334.125(b)].</p>	<p>Total Assessed: \$3,300</p> <p>Total Deferred: \$660 <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: \$2,640</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. By May 20, 2010, submitted an amended AST registration and obtained an AST registration certificate;</p> <p>b. On March 12, 2010, submitted an application for an Edwards Aquifer AST Facility Plan modification for 11 of the 16 unauthorized ASTs and the two AST containments which was approved on May 25, 2010 with the condition that the five tanks not included in the Edwards Aquifer AST Facility Plan modification be removed; and</p> <p>c. On June 3, 2010, submitted documentation that the five tanks not included in the Edwards Aquifer AST Facility Plan modification were removed from the Site.</p>

Additional ID No(s): Edwards Aquifer Registration No. 11-10031202 and PST Registration No. 74710



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	1-Jun-2010	Screening	14-Jun-2010	EPA Due	
	PCW	9-Jul-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	RTI Hot Mix, Ltd.
Reg. Ent. Ref. No.	RN101974335
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	3
Enf./Case ID No.	39980	Order Type	1660
Docket No.	2010-1092-MLM:E	Government/Non-Profit	No
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Samuel Short
Multi-Media	Petroleum Storage Tank	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	\$4,000
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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

Notes: No adjustment for 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	\$700
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$62
Approx. Cost of Compliance	\$9,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,300
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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 \$3,300

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,300
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DEFERRAL	20.0% Reduction	Adjustment	-\$660
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Reduces the Final Assessed Penalty by the Indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,640
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Screening Date 14-Jun-2010
Respondent RTI Hot Mix, Ltd.
Case ID No. 39980
Reg. Ent. Reference No. RN101974335
Media [Statute] Edwards Aquifer
Enf. Coordinator Samuel Short

Docket No. 2010-1092-MLM-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of</i>	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 0%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

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

Screening Date 14-Jun-2010

Docket No. 2010-1092-MLM-E

PCW

Respondent RTI Hot Mix, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 39980

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101974335

Media [Statute] Edwards Aquifer

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1)

Violation Description Failed to obtain a modification of an Edwards Aquifer Aboveground Storage Tank ("AST") Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed sixteen ASTs and two AST containments constructed prior to obtaining approval of an AST Facility Plan modification.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		X			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 56 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 April 8, 2010 investigation date to the date the Respondent returned to compliance, June 3, 2010.

Good Faith Efforts to Comply

10.0% Reduction

\$200

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

Notes The Respondent returned to compliance on June 3, 2010.

Violation Subtotal \$1,800

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$61

Violation Final Penalty Total \$1,800

This violation Final Assessed Penalty (adjusted for limits) \$1,800

Economic Benefit Worksheet

Respondent RTI Hot Mix, Ltd.
Case ID No. 39980
Req. Ent. Reference No. RN101974335
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$6,500	8-Apr-2010	25-May-2010	0.13	\$42	n/a	\$42
Other (as needed)	\$2,500	8-Apr-2010	3-Jun-2010	0.15	\$19	n/a	\$19

Notes for DELAYED costs

The estimated cost to prepare, submit the application, and obtain approval of an AST Facility Plan modification. Date required is the investigation date and the final date is the date the AST Facility Plan modification was approved. The estimated cost to remove five ASTs not included in the AST Facility Plan modification. Date required is the date of the investigation and the final date is the date the Respondent sent in notification that the ASTs were removed.

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

\$9,000

TOTAL

\$61

Screening Date 14-Jun-2010

Docket No. 2010-1092-MLM-E

PCW

Respondent RTI Hot Mix, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 39980

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101974335

Media [Statute] Edwards Aquifer

Enf. Coordinator Samuel Short

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.127(a)(1)

Violation Description

Failed to register with the agency two ASTs in existence on or after September 1, 1989. Specifically, the investigator documented a 6,000 gallon on-road diesel tank and a 5,000 gallon off-road diesel tank that contained fuel and were not registered.

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 1

42 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes The Respondent returned to compliance on May 20, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$750

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

Economic Benefit Worksheet

Respondent: RTI Hot Mix, Ltd.

Case ID No.: 39980

Reg. Ent. Reference No.: RN101974335

Media: Edwards Aquifer

Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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)	\$100	8-Apr-2010	20-May-2010	0.12	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an AST registration and obtain an AST registration certificate. Date required is the investigation date and the final date is the date the AST registration certificate was issued.

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

\$100

TOTAL

\$1

Screening Date 14-Jun-2010
Respondent RTI Hot Mix, Ltd.
Case ID No. 39980
Reg. Ent. Reference No. RN101974335
Media [Statute] Edwards Aquifer
Enf. Coordinator Samuel Short
Violation Number 3
Rule Cite(s)

Docket No. 2010-1092-MLM-E

PCW

Policy Revision 2 (September 2002)
 PCW Revision October 30, 2008

30 Tex. Admin. Code § 334.125(b)

Violation Description

Failed to make available to the common carrier a valid current TCEQ registration certificate before accepting delivery of a regulated substance into the ASTs. Specifically, one fuel delivery was accepted without a valid registration certificate.

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

Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

Reduction

\$250

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes

The Respondent returned to compliance on May 20, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$750

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

Economic Benefit Worksheet

Respondent: RTI Hot Mix, Ltd.
Case ID No.: 39980
Req. Ent. Reference No.: RN101974335
Media: Edwards Aquifer
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

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

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

Economic benefit included in Violation No. 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: CN602684359 RTI Hot Mix, Ltd. Classification: AVERAGE Rating: 3.30
 Regulated Entity: RN101974335 RTI SOUTH ASPHALT PLANT Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s):	EDWARDS AQUIFER	REGISTRATION	11-01021401
	EDWARDS AQUIFER	REGISTRATION	11-10031202
	PETROLEUM STORAGE TANK	REGISTRATION	74710
	REGISTRATION		
	AIR NEW SOURCE PERMITS	PERMIT	46728
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HK0121K
	AIR NEW SOURCE PERMITS	REGISTRATION	87754
	AIR NEW SOURCE PERMITS	AFS NUM	4820900672
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HK0121K	

Location: 1101 FM 2770, BUDA, TX, 78610

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: July 07, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 07, 2005 to July 07, 2010

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

Name: Samuel Short Phone: (512) 239-5363

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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
1 05/25/2010 (798423)
- 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
RTI HOT MIX, LTD.
RN101974335**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-1092-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 RTI Hot Mix, Ltd. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an asphalt plant with 16 aboveground storage tanks ("ASTs") at 1101 Farm-to-Market Road 2770 in Buda, Hays County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Respondent's ASTs are not exempt or excluded from regulation under the Texas Water Code or the rules 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 May 30, 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 Three Thousand Three Hundred Dollars (\$3,300) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Six Hundred Forty Dollars (\$2,640) of the administrative penalty and Six Hundred Sixty Dollars (\$660) 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. By May 20, 2010, submitted an amended AST registration and obtained an AST registration certificate;
 - b. On March 12, 2010, submitted an application for an Edwards Aquifer AST Facility Plan modification for 11 of the 16 unauthorized ASTs and the two AST containments which was approved on May 25, 2010 with the condition that the five tanks not included in the Edwards Aquifer AST Facility Plan modification be removed; and
 - c. On June 3, 2010, submitted documentation that the five tanks not included in the Edwards Aquifer AST Facility Plan modification were removed from the Site.
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 and operator of the Site, the Respondent is alleged to have:

1. Failed to obtain a modification of an Edwards Aquifer AST Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on April 8, 2010. Specifically, the investigator observed sixteen ASTs and two AST containments constructed prior to obtaining approval of an AST Facility Plan modification.
2. Failed to register with the agency two ASTs in existence on or after September 1, 1989, in violation of 30 TEX. ADMIN. CODE § 334.127(a)(1), as documented during an investigation conducted on April 8, 2010. Specifically, the investigator documented a 6,000 gallon on-road diesel tank and a 5,000 gallon off-road diesel tank that contained fuel and were not registered.
3. Failed to make available to the common carrier a valid current TCEQ registration certificate before accepting delivery of a regulated substance into the ASTs, in violation of 30 TEX. ADMIN. CODE § 334.125(b), as documented during an investigation conducted on April 8, 2010. Specifically, one fuel delivery was accepted without a valid registration certificate.

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: RTI Hot Mix, Ltd., Docket No. 2010-1092-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the

Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Stalder
For the Executive Director

10/14/2010
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.

Lance M. Townsend
Signature

8-18-10
Date

Lance M Townsend
Name (Printed or typed)
Authorized Representative of
RTI Hot Mix, Ltd.

General Manager
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.

