

Executive Summary – Enforcement Matter – Case No. 33143
ADVANTAGE ASPHALT PRODUCTS, LTD.
RN104416722
Docket No. 2009-1305-WQ-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

4241 County Road 22, Claude, Armstrong County

Type of Operation:

sand and gravel mining operation

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: August 5, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$16,032

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$668

Total Due to General Revenue: \$15,364

Payment Plan: 23 payments of \$668 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Average

Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: May 31 – 15, 2009; December 16, 2009
Date(s) of NOV(s): August 14, 2006
Date(s) of NOE(s): June 10, 2009

Violation Information

1. Failed to demonstrate acceptable corrective action to develop a site map that indicated the location of each outfall covered by the permit, location of each sampling point, and physical features that influence the storm water runoff [Agreed Order No. 2007-0548-WQ-E, Ordering Provision No. 2.a. and TEX. WATER CODE § 26.121(c) and (e)].
2. Failed to develop and implement erosion control measures and best management practices (“BMPs”) that would effectively divert storm water away from Indian Creek [Agreed Order No. 2007-0548-WQ-E, Ordering Provisions Nos. 2.b. and 2.d. and TEX. WATER CODE § 26.121(c) and (e)].
3. Failed to design and describe adequate structural controls and include a maintenance program for storm water structural controls in the stormwater pollution prevention plan (“SWP3”) [Agreed Order No. 2007-0548-WQ-E, Ordering Provision No. 2.c. and TEX. WATER CODE § 26.121(c) and (e)].
4. Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state [TEX. WATER CODE § 26.121(a) and (d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent no longer operates at the Site

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: May 14, 2010 (EDPRP); July 5, 2011 (EDFARP)
Date Answer(s) Filed: July 30, 2010
SOAH Referral Date: September 20, 2010
Hearing Date(s):
Preliminary hearing: December 2, 2010
Evidentiary hearing: February 25, 2011 (continued to July 15, 2011)
Settlement Date: July 7, 2011

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Lanae Foard, Water Enforcement Section, (512) 239-2554

TCEQ Regional Contact: Jim McWilliams, Amarillo Regional Office, (806) 468-0520

Respondent: Scott Knutson, Managing Partner, Advantage Asphalt Products, Ltd., P.O. Box 51772, Amarillo, Texas 79159-1772

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Jun-2009		
	PCW	5-Jul-2011	Screening	29-Jun-2009
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Advantage Asphalt Products, Ltd.
Reg. Ent. Ref. No.	RN104416722
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33143	No. of Violations	3
Docket No.	2009-1305-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,600
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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	25.0% Enhancement	Subtotals 2, 3, & 7	\$900
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Notes: An enhancement is recommended due to one NOV with violations same or similar violations to those cited in this action and one final agreed order containing a denial of liability.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$7,115
 Approx. Cost of Compliance \$6,600
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	158.1%	Adjustment	\$7,115
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture avoided costs associated with the violations.

Final Penalty Amount \$11,615

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,615
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$11,615
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Screening Date 29-Jun-2009	Docket No. 2009-1305-WQ-E	PCW
Respondent Advantage Asphalt Products, Ltd.		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 33143		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN104416722		
Media [Statute] Water Quality		
Enf. Coordinator Lanae Foard		

Compliance History Worksheet

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

Component	Number of...	<i>Enter Number Here</i>	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

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

No	Adjustment Percentage (Subtotal 3) 0%
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>> **Compliance History Person Classification (Subtotal 7)**

Average Performer	Adjustment Percentage (Subtotal 7) 0%
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>> **Compliance History Summary**

Compliance History Notes	An enhancement is recommended due to one NOV with violations same or similar violations to those cited in this action and one final agreed order containing a denial of liability.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date	29-Jun-2009	Docket No.	2009-1305-WQ-E	PCW
Respondent	Advantage Asphalt Products, Ltd.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	33143			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN104416722			
Media [Statute]	Water Quality			
Enf. Coordinator	Lanae Foard			
Violation Number	1			
Rule Cite(s)	TCEQ Agreed Order Docket No. 2007-0548-WQ-E, Ordering Provision No. 2.a and Tex. Water Code § 26.121(c) and (e)			
Violation Description	Failed to demonstrate acceptable corrective action to develop a site map that indicated the location of each Outfall covered by the permit, location of each sampling point, and physical features that influence the storm water runoff, as documented during an investigation conducted on May 13, 2009. Specifically, the Respondent submitted a hand-drawn map that was determined to be inadequate by the TCEQ.			
		Base Penalty		\$10,000
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
			Percent	0%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>
			Percent	1%
Matrix Notes	Less than 30% of the rule requirement was not met.			
		Adjustment		\$9,900
				\$100
Violation Events				
	Number of Violation Events	1	Number of violation days	279
		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 checked="" type="text" value="x"/>	
	<i>mark only one with an x</i>			Violation Base Penalty
				\$100
	One single event is recommended based on documentation of the violation during the May 13, 2009 investigation.			
Good Faith Efforts to Comply				
		0.0%	Reduction	\$0
		Before NOV	NOV to EDPRP/Settlement	
	Extraordinary	<input type="text"/>	<input type="text"/>	
	Ordinary	<input type="text"/>	<input type="text"/>	
	N/A	<input checked="" type="text" value="x"/>	(mark with x)	
	Notes	The Respondent does not meet the good faith criteria for this violation.		
		Violation Subtotal		\$100
Economic Benefit (EB) for this violation				
	Estimated EB Amount	\$108	Violation Final Penalty Total	\$323
		This violation Final Assessed Penalty (adjusted for limits)		\$323

Economic Benefit Worksheet

Respondent Advantage Asphalt Products, Ltd.
Case ID No. 33143
Reg. Ent. Reference No. RN104416722
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
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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)	\$100	6-Nov-2008	29-Jun-2009	1.56	\$8	\$100	\$108

Notes for AVOIDED costs

Estimated cost to modify the site map. Date required is the effective date of TCEQ Agreed Order Docket No. 2007-0548-WQ-E. Final date is the screening date.

Approx. Cost of Compliance \$100

TOTAL \$108

Screening Date	29-Jun-2009	Docket No.	2009-1305-WQ-E	PCW
Respondent	Advantage Asphalt Products, Ltd.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	33143	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN104416722			
Media [Statute]	Water Quality			
Enf. Coordinator	Lanae Foard			
Violation Number	2			
Rule Cite(s)	TCEQ Agreed Order Docket No. 2007-0548-WQ-E, Ordering Provision Nos. 2.b and 2.d and Tex. Water Code § 26.121(c) and (e)			
Violation Description	Failed to develop and implement erosion control measures and best management practices ("BMPs") that would effectively divert storm water away from Indian Creek, as documented during an investigation conducted on May 13, 2009. Specifically, the Storm Water Pollution Prevention Plan ("SWP3") did not contain any reference to BMPs and no BMPs were developed or implemented at the Site.			
Base Penalty				\$10,000
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential		x	
				Percent 10%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
				Percent 0%
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.			
Adjustment				\$9,000
				\$1,000
Violation Events				
	Number of Violation Events	3	Number of violation days	235
<i>mark only one with an x</i>	daily			
	weekly			
	monthly			
	quarterly		x	
	semiannual			
	annual			
	single event			
				Violation Base Penalty \$3,000
Three quarterly events are recommended from the effective date of TCEQ Agreed Order Docket No. 2007-0548-WQ-E (November 6, 2008) to the screening date (June 29, 2009).				
Good Faith Efforts to Comply				0.0% Reduction
				\$0
		Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary				
Ordinary				
N/A	x	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal				\$3,000
Economic Benefit (EB) for this violation				
Statutory Limit Test				
Estimated EB Amount	\$6,468	Violation Final Penalty Total	\$9,679	
This violation Final Assessed Penalty (adjusted for limits)				\$9,679

Economic Benefit Worksheet

Respondent Advantage Asphalt Products, Ltd.
Case ID No. 33143
Reg. Ent. Reference No. RN104416722
Media Water Quality
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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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)	\$6,000	6-Nov-2008	29-Jun-2009	1.56	\$468	\$6,000	\$6,468

Notes for AVOIDED costs

The estimated cost to develop and implement BMPs and erosion controls to prevent unauthorized discharges to the creek. Date required is the effective date of Agreed Order Docket No. 2007-0548-WQ-E. Final date is the screening date.

Approx. Cost of Compliance

\$6,000

TOTAL

\$6,468

Screening Date	29-Jun-2009	Docket No.	2009-1305-WQ-E	PCW
Respondent	Advantage Asphalt Products, Ltd.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	33143	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN104416722			
Media [Statute]	Water Quality			
Enf. Coordinator	Lanae Foard			
Violation Number	3			
Rule Cite(s)	TCEQ Agreed Order Docket No. 2007-0548-WQ-E, Ordering Provision No. 2.c and Tex. Water Code § 26.121(c) and (e)			
Violation Description	Failed to design and describe adequate structural controls and include a maintenance program for storm water structural controls in the SWP3, as documented in an investigation conducted on May 13, 2009. Specifically, the Respondent submitted a structural control and maintenance program that was determined to be inadequate by the TCEQ.			
Base Penalty				\$10,000
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Major	Moderate	Minor	
Release				
Actual				Percent 0%
Potential				
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
			x	
				Percent 5%
Matrix Notes	At least 30%, but less than 70% of the rule requirement was met.			
Adjustment				\$9,500
				\$500
Violation Events				
	Number of Violation Events	1	Number of violation days	279
<i>mark only one with an x</i>	daily			
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event		x	
Violation Base Penalty				\$500
One single event is recommended based on documentation of the violation during the May 13, 2009 investigation.				
Good Faith Efforts to Comply				
0.0% Reduction				
<small>Before NOV NOV to EDRP/Settlement Offer</small>				
Extraordinary				
Ordinary				
N/A	x	<small>(mark with x)</small>		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal				\$500
Economic Benefit (EB) for this violation				
Statutory Limit Test				
Estimated EB Amount		\$539	Violation Final Penalty Total \$1,613	
This violation Final Assessed Penalty (adjusted for limits)				\$1,613

Economic Benefit Worksheet

Respondent Advantage Asphalt Products, Ltd.
Case ID No. 33143
Reg. Ent. Reference No. RN104416722
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

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

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)	\$500	6-Nov-2008	29-Jun-2009	1.56	\$39	\$500	\$539

Notes for AVOIDED costs

Estimated cost to design and describe adequate structural controls and include a maintenance program for storm structural controls in the SWP3. Date required is the effective date of TCEQ Agreed Order Docket No. 2007-0548-WQ-E. Final date is the screening date.

Approx. Cost of Compliance \$500

TOTAL \$539



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-Feb-2010		
	PCW	5-Jul-2011	Screening	26-Feb-2010
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Advantage Asphalt Products, Ltd.
Reg. Ent. Ref. No.	RN104416722
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33143	No. of Violations	1
Docket No.	2009-1305-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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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	25.0% Enhancement	Subtotals 2, 3, & 7	\$250
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Notes: An enhancement is recommended due to one NOV with violations same or similar violations to those cited in this action and one final agreed order containing a denial of liability.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$3,167
 Approx. Cost of Compliance \$3,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	253.4%	Adjustment	\$3,167
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture avoided costs associated with the violation.

Final Penalty Amount \$4,417

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,417
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$4,417
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Screening Date 26-Feb-2010	Docket No. 2009-1305-WQ-E	PCW
Respondent Advantage Asphalt Products, Ltd.		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 33143		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN104416722		
Media [Statute] Water Quality		
Enf. Coordinator Lanae Foard		

Compliance History Worksheet

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

Component	Number of...	<i>Enter Number Here</i>	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

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

No	Adjustment Percentage (Subtotal 3) 0%
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>> **Compliance History Person Classification (Subtotal 7)**

Average Performer	Adjustment Percentage (Subtotal 7) 0%
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>> **Compliance History Summary**

Compliance History Notes	An enhancement is recommended due to one NOV with violations same or similar violations to those cited in this action and one final agreed order containing a denial of liability.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date	26-Feb-2010	Docket No.	2009-1305-WQ-E	PCW
Respondent	Advantage Asphalt Products, Ltd.	Policy Revision 2 (September 2002)		
Case ID No.	33143	PCW Revision October 30, 2008		
Reg. Ent. Reference No.	RN104416722			
Media [Statute]	Water Quality			
Enf. Coordinator	Lanae Foard			
Violation Number	1			
Rule Cite(s)	Tex. Water Code § 26.121(a) and (d)			
Violation Description	Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state, as documented during an investigation conducted on December 16, 2009. Specifically, waste material, including sand, rock, and gravel were deposited within the banks of Indian Creek, and erosion rills on the faces of the slopes of either side of Indian Creek due to prior mining operation were noted at the Site.			
Base Penalty				\$10,000
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			x
	Potential			
				Percent 10%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
				Percent 0%
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.			
Adjustment				\$9,000
				\$1,000
Violation Events				
	Number of Violation Events	1	Number of violation days	62
mark only one with an x	daily			
	weekly			
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
				Violation Base Penalty \$1,000
One quarterly event is recommended from the investigation date (December 16, 2009) to the screening date (February 16, 2010).				
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 good faith criteria for this violation.			
Violation Subtotal				\$1,000
Economic Benefit (EB) for this violation				
			Statutory Limit Test	
Estimated EB Amount	\$3,167	Violation Final Penalty Total	\$4,417	
			This violation Final Assessed Penalty (adjusted for limits) \$4,417	

Economic Benefit Worksheet

Respondent Advantage Asphalt Products, Ltd.
Case ID No. 33143
Reg. Ent. Reference No. RN104416722
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
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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)	\$3,000	16-Dec-2009	26-Feb-2010	1.12	\$167	\$3,000	\$3,167

Notes for AVOIDED costs

Estimated cost to remove and properly dispose of the sediment accumulations and stabilize the banks of Indian Creek in the area affected by the previous mining operation. Date required is the investigation date. Final date is the screening date.

Approx. Cost of Compliance

\$3,000

TOTAL

\$3,167

Compliance History Report

Customer/Respondent/Owner-Operator: CN601535529 Advantage Asphalt Products, Ltd. Classification: AVERAGE Rating: 13.70
Regulated Entity: RN104416722 ADVANTAGE ASPHALT PRODUCTS AMARILLO
Classification: AVERAGE Site Rating: 5.25

ID Number(s):
Location: 4241 COUNTY ROAD 22, AMARILLO, TX, 79109
TCEQ Region: REGION 01 - AMARILLO
Date Compliance History Prepared: August 17, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 17, 2004 to August 17, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lanae Foard Phone: 512-239-2554

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance per Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/ope N/A
5. When did the change(s) in owner or operatc N/A
6. Rating Date: 9/1/2008 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.

Effective Date: 11/06/2008

ADMINORDER 2007-0548-WQ-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: MSGP, Part III, Section A(4)(c)(1)-(12) PERMIT

Description: Failed to develop a site map that meets the requirements of the MSGP, Part III, Section A(4)(c)(1)- (12).

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: A(5), (5)(c), and (5)(e), and A(6)(a) PERMIT

Description: Failed to develop and implement erosion control measures at the site.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: MSGP Part III, Section A, 6(a) PERMIT

Description: Failed to design and describe adequate controls in the SWP3.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Part III, Section A(5)(d) PERMIT

Description: Failed to develop and implement Best Management Practices (BMPs) to reduce the discharge or potential discharge of pollutants in storm water.

- 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 06/05/2005 (344340)

2 03/26/2007 (540278)

3 05/24/2007 (561188)

4 06/09/2009 (745666)

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

Date: 08/14/2006 (484108) CN601535529

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

MSGP, Part III, Section A(4)(c)(1)-(12) PERMIT

Description: Failed to develop a site map that meets the requirements of the MSGP, Part III, Section A(4)(c)(1)- (12).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

MSGP Part III, Section C 5(a) PERMIT

Description: The facility has failed to document conditions that prevented the collection of storm water samples for quarterly visual examination.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)A(5), (5)(c), and (5)(e), and A(6)(a) PERMIT

Description: Failed to develop and implement erosion control measures at the site.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

MSGP Part III, Section A, 6(a) PERMIT

Description: Failed to design and describe adequate controls in the SWP3.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 MSGP Part III, Section A, 5(d) PERMIT
 Description: The facility has failed to respond by the compliance due date for a alleged violation of failure to develop and implement a Maintenance Program for Structural Controls.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Part III, Section A(5)(d) PERMIT
 Description: Failed to develop and implement Best Management Practices (BMPs) to reduce the discharge or potential discharge of pollutants in storm water.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 MSGP Part V, Section J(3) PERMIT
 Description: On July 11, 2006, the operator of a front loader at the facility's sand and gravel site was observed scraping/scooping up storm water that had ponded in the operational area and disposing of the storm water by dumping it down the sloping face on the west side of the operational area.

- 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
ADVANTAGE ASPHALT PRODUCTS,
LTD.;
RN104416722**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2009-1305-WQ-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Advantage Asphalt Products, Ltd. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

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

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

FINDINGS OF FACT

1. Respondent operated a sand and gravel mining operation located at 4241 County Road 22, Claude, Armstrong County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During investigations conducted on May 13-15, 2009 and December 16, 2009, a TCEQ Amarillo Regional Office investigator documented that Respondent:
 - a. Failed to demonstrate acceptable corrective action to develop a site map that indicated the location of each outfall covered by the permit, location of each sampling point, and physical features that influence the storm water runoff;

- b. Failed to develop and implement erosion control measures and best management practices (“BMPs”) that would effectively divert storm water away from Indian Creek. Specifically, the Storm Water Pollution Prevention Plan (“SWP3”) did not contain any reference to BMPs and no BMPs were developed or implemented at the Site;
 - c. Failed to design and describe adequate structural controls and include a maintenance program for storm water structural controls in the SWP3; and
 - d. Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state. Specifically, waste material, including sand, rock, and gravel were deposited within the banks of Indian Creek, and erosion rills on the faces of the slopes of either side of Indian Creek due to prior mining operation were noted at the Site.
3. Respondent received notice of the violations on or about June 15, 2009.
 4. The Executive Director recognizes that Respondent no longer operates at the Site.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to demonstrate acceptable corrective action to develop a site map that indicated the location of each outfall covered by the permit, location of each sampling point, and physical features that influence the storm water runoff, in violation of TCEQ Agreed Order Docket No. 2007-0548-WQ-E, Ordering Provision No. 2.a., and TEX. WATER CODE § 26.121(c) and (e).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to develop and implement erosion control measures and BMPs that would effectively divert storm water away from Indian Creek, in violation of TCEQ Agreed Order Docket No. 2007-0548-WQ-E, Ordering Provisions Nos. 2.b. and 2.d., and TEX. WATER CODE § 26.121(c) and (e).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to design and describe adequate structural controls and include a maintenance program for storm water structural controls in the SWP3, in violation of TCEQ Agreed Order Docket No. 2007-0548-WQ-E, Ordering Provision No. 2.c., and TEX. WATER CODE § 26.121(c) and (e).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a) and (d).
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

7. An administrative penalty in the amount of sixteen thousand thirty-two dollars (\$16,032.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid six hundred sixty-eight dollars (\$668.00) of the administrative penalty. The remaining amount of fifteen thousand three hundred sixty-four dollars (\$15,364.00) of the administrative penalty shall be payable in twenty-three (23) monthly payments of six hundred sixty-eight dollars (\$668.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 7, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Advantage Asphalt Products, Ltd., Docket No. 2009-1305-WQ-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent.
4. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

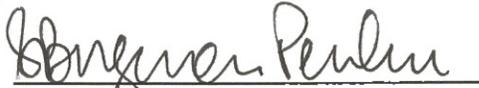
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Advantage Asphalt Products, Ltd.
Docket No. 2009-1305-WQ-E
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

9/30/2011

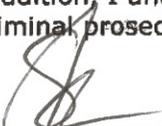
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Advantage Asphalt Products, Ltd., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Scotty Knutson, Managing Partner
Advantage Asphalt Products, Ltd.

7/7/11

Date