

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

DOCKET NO. 2010-0276-WQ-E

RN104582275

CASE NO. 39185

**RESPONDENT NAME: GRANBURY MATERIALS, LLC**

| ORDER TYPE:                                      |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> 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 type="checkbox"/> MULTI-MEDIA<br>(check all that apply) | <input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE    |
| <input type="checkbox"/> PUBLIC WATER SUPPLY      | <input type="checkbox"/> PETROLEUM STORAGE TANKS               | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION    |
| <input checked="" type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE                         | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE    | <input type="checkbox"/> RADIOACTIVE WASTE                     | <input type="checkbox"/> DRY CLEANER REGISTRATION      |

**SITE WHERE VIOLATION(S) OCCURRED:** 5670 Rollins Road, Granbury, Hood County

**TYPE OF OPERATION:** sand and gravel mining operation

**SMALL BUSINESS:**  Yes  No  N/A

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that industrial activity in the area, including operations from this sand and gravel mining operation, may be adversely impacting surface water quality in the area. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired December 20, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

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

**TCEQ Enforcement Coordinator:** Marty Hott, Water Enforcement Section, MC 169, (512) 239-2587

**TCEQ Regional Contact:** Sid Slocum, Dallas/Fort Worth Regional Office, MC R-04, (817) 588-5901

**TCEQ SEP Coordinator:** Sharon Blue, Litigation Division, MC 175, (512) 239-3400

**Respondent:** Wayne Wienecke, Member, Granbury Materials, LLC, 3600 Tolar Highway, Tolar, Texas 76476;

Mayfield McCraw, Member, Granbury Materials, LLC, Box 9, Telephone, Texas 75488

**Respondent's Attorney:** Erich Birch, Birch, Becker & Moorman, LLP, 4601 Spicewood Springs Rd., Bldg. 4, Ste. 101, Austin, Texas 78753

| VIOLATION SUMMARY CHART:   |  |  |
|--|--|--|
| VIOLATION INFORMATION  | PENALTY CONSIDERATIONS   | CORRECTIVE ACTIONS TAKEN/REQUIRED  |
| <p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint<br/> <input type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b><br/>July 28, 2009</p> <p><b>Date of Investigation:</b><br/>August 21, 2009</p> <p><b>Date of NOE:</b><br/>February 9, 2010</p> <p><b>Background Facts:</b><br/>The EDRP was filed on June 10, 2010. Respondent filed an answer and the case was referred to SOAH. The Agreed Order was signed on October 20, 2010.</p> <p><b>Current Compliance Status:</b><br/>Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p><b>WQ:</b></p> <p>Failed to renew authorization to discharge storm water associated with industrial activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c)].</p> | <p><b>Total Assessed:</b> \$14,000</p> <p><b>Total Deferred:</b> \$0<br/> <input type="checkbox"/> Expedited Order<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$2,310</p> <p><b>Total Paid/Due to General Revenue:</b><br/>\$525/\$11,165</p> <p>Respondent paid \$525 of the administrative penalty. The amount of \$2,310 shall be contributed to a Supplemental Environmental Project ("SEP") in 6 monthly payments of \$385 each, with the initial payment being due within 30 days. Thereafter, the remaining amount of \$11,165 of the administrative penalty shall be payable in 29 monthly payments of \$385 each.</p> <p><b>Compliance History Classifications:</b><br/> <i>Person/CN</i> – Average<br/> <i>Site/RN</i> – Average</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days, develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent to comply with the Multi-Sector General Permit requirements.</li> <li>2. Within 45 days, submit written certification demonstrating compliance.</li> <li>3. Implement and complete a SEP (RC&amp;D – <i>Water and Wastewater Assistance</i> - Brazos River Basin, Trinity River Basin - preference for Hood County).</li> </ol> |

**Attachment A**  
**Docket Number: 2010-0276-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Granbury Materials, LLC

**Penalty Amount:** Fourteen Thousand Dollars (\$14,000)

**SEP Offset Amount:** Two Thousand Three Hundred Ten Dollars (\$2,310)

**Type of SEP:** Pre-approved SEP

**Third-Party Recipient:** Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D") *Water and Wastewater Assistance Program*

**Location of SEP:** Brazos River Basin or Trinity River Basin (preference for Hood County)

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

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The SEP contribution will be used by the ***Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")*** for the *Water and Wastewater Assistance Program* project as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP monies will pay for the labor and disposal costs associated with assistance to low-income residents with shallow, improperly designed, or contaminated drinking water wells or failing wastewater systems. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project. The project will be administered in accordance with federal, state, and local environmental laws and regulations.

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

B. Environmental Benefit

The wastewater portion of this SEP will provide a discernible environmental benefit by preventing the release of sewage into the environment. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. People can be exposed through:

- Sewage in drinking water sources.
- Direct contact in areas of public access such as in lawns or streets, or waters used for recreation.
- Shellfish harvested from areas contaminated by raw sewage.
- Inhalation and skin absorption.

Sewage overflows may cause damage to the environment. A key concern with sewage overflows is the effect on rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause excess algae blooms, and kill fish and other organisms in aquatic habitats.

The drinking water portion of this project will protect water sources for drinking, recreation and wildlife from contamination from the failing treatment systems, and protect public health from contaminated drinking water supplies.

C. Minimum Expenditure

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

**2. Performance Schedule**

The SEP offset amount of two thousand three hundred ten dollars (\$2,310) shall be payable in six (6) monthly payments of three hundred eighty-five dollars (\$385) each. A copy of the fully executed Agreed Order shall be included with the initial payment and shall be paid within 30 days after the effective date of the Agreed Order. All checks submitted shall be made payable to "Texas Association of Resource Conservation and Development Areas, Inc." and shall be mailed to:

Texas Association of Resource Conservation  
and Development Areas, Inc. (RC&D)  
1716 Briarcrest Drive Suite 507  
Bryan, Texas 77802-2700

The subsequent five (5) monthly payments shall each be paid not later than thirty (30) days following the due date of the previous payment. The final payment shall be paid no later than 210 days after the effective date of the Agreed Order.

**3. Records and Reporting**

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

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

#### **4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

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

#### **5. Publicity**

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

#### **6. Clean Texas Program**

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

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

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 16-Feb-2010 | <b>Screening</b> | 19-Feb-2010 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 20-May-2010 |                  |             |                |  |

|  |                         |
|--|-------------------------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                         |
| <b>Respondent</b>                      | Granbury Materials, LLC |
| <b>Reg. Ent. Ref. No.</b>              | RN104582275             |
| <b>Facility/Site Region</b>            | 4-Dallas/Fort Worth     |
| <b>Major/Minor Source</b>              | Minor                   |

|                                |                |                              |                    |          |
|--------------------------------|----------------|------------------------------|--------------------|----------|
| <b>CASE INFORMATION</b>        |                |                              |                    |          |
| <b>Enf./Case ID No.</b>        | 39185          | <b>No. of Violations</b>     | 1                  |          |
| <b>Docket No.</b>              | 2010-0276-WQ-E | <b>Order Type</b>            | 1660               |          |
| <b>Media Program(s)</b>        | Water Quality  | <b>Government/Non-Profit</b> | No                 |          |
| <b>Multi-Media</b>             |                | <b>Enf. Coordinator</b>      | Marty Hott         |          |
|                                |                | <b>EC's Team</b>             | Enforcement Team 1 |          |
| <b>Admin. Penalty \$ Limit</b> | <b>Minimum</b> | \$0                          | <b>Maximum</b>     | \$10,000 |

## Penalty Calculation Section

|   |                   |          |
|---|-------------------|----------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | \$14,000 |
|---|-------------------|----------|

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

|                           |                  |                                |     |
|---------------------------|------------------|--------------------------------|-----|
| <b>Compliance History</b> | 0.0% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | \$0 |
|---------------------------|------------------|--------------------------------|-----|

|              |  |
|--------------|--|
| <b>Notes</b> | No adjustment due to compliance history. |
|--------------|--|

|                    |    |                  |                   |     |
|--------------------|----|------------------|-------------------|-----|
| <b>Culpability</b> | No | 0.0% Enhancement | <b>Subtotal 4</b> | \$0 |
|--------------------|----|------------------|-------------------|-----|

|              |  |
|--------------|--|
| <b>Notes</b> | The Respondent does not meet the culpability criteria. |
|--------------|--|

|  |                   |     |
|--|-------------------|-----|
| <b>Good Faith Effort to Comply Total Adjustments</b> | <b>Subtotal 5</b> | \$0 |
|--|-------------------|-----|

|                         |                   |                   |     |
|-------------------------|-------------------|-------------------|-----|
| <b>Economic Benefit</b> | 0.0% Enhancement* | <b>Subtotal 6</b> | \$0 |
|-------------------------|-------------------|-------------------|-----|

|                            |         |                                   |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts           | \$361   | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$2,000 |                                   |

|                             |                       |          |
|-----------------------------|-----------------------|----------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$14,000 |
|-----------------------------|-----------------------|----------|

|   |      |                   |     |
|---|------|-------------------|-----|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | 0.0% | <b>Adjustment</b> | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

|              |  |
|--------------|--|
| <b>Notes</b> |  |
|--------------|--|

|                             |          |
|-----------------------------|----------|
| <b>Final Penalty Amount</b> | \$14,000 |
|-----------------------------|----------|

|                                   |                               |          |
|-----------------------------------|-------------------------------|----------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$14,000 |
|-----------------------------------|-------------------------------|----------|

|                 |      |           |                   |     |
|-----------------|------|-----------|-------------------|-----|
| <b>DEFERRAL</b> | 0.0% | Reduction | <b>Adjustment</b> | \$0 |
|-----------------|------|-----------|-------------------|-----|

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

|              |  |
|--------------|--|
| <b>Notes</b> | Deferral not offered for non-expedited settlement. |
|--------------|--|

|                        |          |
|------------------------|----------|
| <b>PAYABLE PENALTY</b> | \$14,000 |
|------------------------|----------|

Screening Date 19-Feb-2010

Docket No. 2010-0276-WQ-E

PCW

Respondent Granbury Materials, LLC

Policy Revision 2 (September 2002)

Case ID No. 39185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104582275

Media [Statute] Water Quality

Enf. Coordinator Marty Hott

### 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)

N/A

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 adjustment due to compliance history.

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

|                                |  |   |                |            |
|--------------------------------|--|---|----------------|------------|
| <b>Screening Date</b>          | 19-Feb-2010  | <b>Docket No.</b>                         | 2010-0276-WQ-E | <b>PCW</b> |
| <b>Respondent</b>              | Granbury Materials, LLC  | <i>Policy Revision 2 (September 2002)</i> |                |            |
| <b>Case ID No.</b>             | 39185  | <i>PCW Revision October 30, 2008</i>      |                |            |
| <b>Reg. Ent. Reference No.</b> | RN104582275  |   |                |            |
| <b>Media [Statute]</b>         | Water Quality  |   |                |            |
| <b>Enf. Coordinator</b>        | Marty Hott   |   |                |            |
| <b>Violation Number</b>        | 1  |   |                |            |
| <b>Rule Cite(s)</b>            | 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)  |   |                |            |
| <b>Violation Description</b>   | Failed to renew authorization to discharge storm water associated with industrial activities, as documented during an investigation conducted on August 21, 2009. Specifically, the Respondent did not renew the Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit (TXR050000) for Rollins Road Pit which expired on December 12, 2006. |   |                |            |
| <b>Base Penalty</b>            | \$10,000   |   |                |            |

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

|           |                |       |          |       |  |
|-----------|----------------|-------|----------|-------|--|
| <b>OR</b> | <b>Harm</b>    |       |          |       |  |
|           | <b>Release</b> | Major | Moderate | Minor |  |
|           | Actual         |       |          |       | <b>Percent</b> <input type="text" value="0%"/> |
| Potential |                |       |          |       |  |

**>> Programmatic Matrix**

|                     |  |       |          |       |   |
|---------------------|--|-------|----------|-------|---|
|                     | Falsification  | Major | Moderate | Minor |   |
|                     |  | x     |          |       | <b>Percent</b> <input type="text" value="10%"/> |
| <b>Matrix Notes</b> | 100% of the rule requirement was not met.              |       |          |       |   |
|                     | <b>Adjustment</b> <input type="text" value="\$9,000"/> |       |          |       |   |

**Violation Events**

|   |                                 |                                     |                                 |   |
|---|---------------------------------|-------------------------------------|---------------------------------|---|
| <b>Number of Violation Events</b>   | <input type="text" value="14"/> | <input type="text" value="1165"/>   | <b>Number of violation days</b> |   |
| <i>mark only one with an x</i>  | daily                           | <input type="text"/>                |                                 | <b>Violation Base Penalty</b> <input type="text" value="\$14,000"/> |
|   | weekly                          | <input type="text"/>                |                                 |   |
|   | monthly                         | <input type="text"/>                |                                 |   |
|   | quarterly                       | <input checked="" type="checkbox"/> |                                 |   |
|   | semiannual                      | <input type="text"/>                |                                 |   |
|   | annual                          | <input type="text"/>                |                                 |   |
|   | single event                    | <input type="text"/>                |                                 |   |
| <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">         Fourteen quarterly events are recommended from the date the permit renewal was due (December 12, 2006) to the screening date (February 19, 2010).       </div> |                                 |                                     |                                 |   |

**Good Faith Efforts to Comply**  Reduction

|                           |  |                      |                                       |
|---------------------------|--|----------------------|---------------------------------------|
|                           | Before NOV      NOV to EDPRP/Settlement                                  |                      |                                       |
| <b>Extraordinary</b>      | <input type="text"/>   | <input type="text"/> |                                       |
| <b>Ordinary</b>           | <input type="text"/>   | <input type="text"/> |                                       |
| <b>N/A</b>                | <input checked="" type="checkbox"/>                                      | (mark with x)        |                                       |
| <b>Notes</b>              | The Respondent does not meet the good faith criteria for this violation. |                      |                                       |
| <b>Violation Subtotal</b> |  |                      | <input type="text" value="\$14,000"/> |

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

|  |                                    |                                       |                                       |
|--|------------------------------------|---------------------------------------|---------------------------------------|
| <b>Estimated EB Amount</b>   | <input type="text" value="\$361"/> | <b>Violation Final Penalty Total</b>  | <input type="text" value="\$14,000"/> |
| <b>This violation Final Assessed Penalty (adjusted for limits)</b> |                                    | <input type="text" value="\$14,000"/> |                                       |

## Economic Benefit Worksheet

**Respondent** Granbury Materials, LLC  
**Case ID No.** 39185  
**Reg. Ent. Reference No.** RN104582275  
**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             | \$2,000 | 12-Dec-2006 | 20-Jul-2010 | 3.61 | \$361 | n/a | \$361 |
| Other (as needed)        |         |             |             | 0.00 | \$0   | n/a | \$0   |

Notes for DELAYED costs

Estimated costs to obtain a permit to discharge storm water associated with industrial activities under TPDES Multi-Sector General Permit (TXR050000), including developing and implementing a storm water pollution prevention plan. Date required is the date renewal of the TPDES Multi-Sector General Permit TXR050000 was required. Final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

|         |
|---------|
| \$2,000 |
|---------|

**TOTAL**

|       |
|-------|
| \$361 |
|-------|

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602821548 Granbury Materials, LLC Classification: Rating:  
Regulated Entity: RN104582275 ROLLINS ROAD PIT Classification: Site Rating:  
ID Number(s):  
Location: 5670 ROLLINS RD, GRANBURY, HOOD COUNTY, TX  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: February 19, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: February 19, 2005 to February 19, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Marty Hott Phone: 512-239- 2587

## 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

## 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
  - 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  
GRANBURY MATERIALS, LLC;  
RN104582275**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2010-0276-WQ-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Granbury Materials, LLC ("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, represented by Erich Birch of the law firm Birch, Becker & Moorman, LLP, appear before the Commission and together stipulate that:

1. Respondent owns and operates a sand and gravel mining operation located at 5670 Rollins Road in Granbury, Hood County, Texas (the "Site"). Respondent has discharged waste from the Site into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of fourteen thousand dollars (\$14,000.00) is assessed by the Commission in settlement of the violations alleged in Section II. Pursuant to TEX. WATER CODE § 7.067, two thousand three hundred ten dollars (\$2,310.00) of the administrative penalty shall be conditionally offset by Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the SEP Agreement ("Attachment A" - incorporated herein by reference). The conditionally offset amount of two thousand three hundred ten dollars (\$2,310.00) shall be payable to the SEP in six (6) monthly payments of three hundred eighty-five dollars (\$385.00) each. The initial payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent

payments shall each be paid not later than 30 days following the due date of the previous payment. Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed by this Agreed Order shall be discharged upon full compliance with all the terms and conditions of this Agreed Order, which includes timely and satisfactory completion of all provisions of the SEP Agreement as determined by the Executive Director.

Respondent paid five hundred twenty-five dollars (\$525.00) of the administrative penalty. The remaining amount of eleven thousand one hundred sixty-five dollars (\$11,165.00) shall be payable in twenty-nine (29) monthly payments of three hundred eighty-five dollars (\$385.00) dollars each. The first monthly payment shall be paid within 210 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full.

If Respondent fails to timely and satisfactorily comply with any requirement contained in 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 conditionally offset portion of the administrative penalty shall become immediately due and payable without demand or notice. The acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order, and the Executive Director may require Respondent to pay all or part of the conditionally offset administrative penalty.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. 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.
9. 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.
10. 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

1. During an investigation conducted on August 21, 2009 a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") § 122.26(c) by failing to renew authorization to discharge storm water associated with industrial

activities. Specifically, Respondent did not renew the Texas Pollutant Discharge Elimination System Permit TXR05S016 for the Site, which expired on December 12, 2006.

2. Respondent received notice of the violation on or about February 14, 2010.

### III. DENIALS

Respondent generally denies each Allegation in Section II.

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. 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 Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action 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: Granbury Materials, LLC, Docket No. 2010-0276-WQ-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. Respondent shall implement and complete a SEP as set forth in Section I, Paragraph 5, above. The amount of two thousand three hundred ten dollars (\$2,310.00) of the assessed administrative penalty is conditionally offset based on the condition that Respondent implement and complete a SEP pursuant to the terms and conditions contained in the SEP Agreement, as defined in Attachment A. Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty shall be discharged upon full, final, and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director. Administrative penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment. Checks shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Granbury Materials, LLC, Docket No. 2010-0276-WQ-E" to:

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

3. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, Respondent shall develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") and submit a Notice of Intent ("NOI") to comply with the Multi-Sector General Permit requirements, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) to:

Texas Commission on Environmental Quality  
Storm Water Processing Center, MC 228  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

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

4. All relief not expressly granted in this Agreed Order is denied.
5. The provisions of this Agreed Order shall apply to and be binding upon Respondent. 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.
6. 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.
7. 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.
  8. This Agreed Order, issued by the Commission, shall not be admissible against 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.
  9. 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.
  10. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director

4/7/2011

\_\_\_\_\_  
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 Granbury Materials, LLC, 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 of Wayne Wieneckie, Member  
Granbury Materials, LLC

10-20-2010

\_\_\_\_\_  
Date

**Attachment A**  
**Docket Number: 2010-0276-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Granbury Materials, LLC

**Penalty Amount:** Fourteen Thousand Dollars (\$14,000)

**SEP Offset Amount:** Two Thousand Three Hundred Ten Dollars (\$2,310)

**Type of SEP:** Pre-approved SEP

**Third-Party Recipient:** Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D") *Water and Wastewater Assistance Program*

**Location of SEP:** Brazos River Basin or Trinity River Basin (preference for Hood County)

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

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The SEP contribution will be used by the ***Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")*** for the *Water and Wastewater Assistance Program* project as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP monies will pay for the labor and disposal costs associated with assistance to low-income residents with shallow, improperly designed, or contaminated drinking water wells or failing wastewater systems. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project. The project will be administered in accordance with federal, state, and local environmental laws and regulations.

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

B. Environmental Benefit

The wastewater portion of this SEP will provide a discernible environmental benefit by preventing the release of sewage into the environment. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. People can be exposed through:

- Sewage in drinking water sources.
- Direct contact in areas of public access such as in lawns or streets, or waters used for recreation.
- Shellfish harvested from areas contaminated by raw sewage.
- Inhalation and skin absorption.

Sewage overflows may cause damage to the environment. A key concern with sewage overflows is the effect on rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause excess algae blooms, and kill fish and other organisms in aquatic habitats.

The drinking water portion of this project will protect water sources for drinking, recreation and wildlife from contamination from the failing treatment systems, and protect public health from contaminated drinking water supplies.

C. Minimum Expenditure

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

**2. Performance Schedule**

The SEP offset amount of two thousand three hundred ten dollars (\$2,310) shall be payable in six (6) monthly payments of three hundred eighty-five dollars (\$385) each. A copy of the fully executed Agreed Order shall be included with the initial payment and shall be paid within 30 days after the effective date of the Agreed Order. All checks submitted shall be made payable to "Texas Association of Resource Conservation and Development Areas, Inc." and shall be mailed to:

Texas Association of Resource Conservation  
and Development Areas, Inc. (RC&D)  
1716 Briarcrest Drive Suite 507  
Bryan, Texas 77802-2700

The subsequent five (5) monthly payments shall each be paid not later than thirty (30) days following the due date of the previous payment. The final payment shall be paid no later than 210 days after the effective date of the Agreed Order.

**3. Records and Reporting**

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

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

#### **4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

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

#### **5. Publicity**

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

#### **6. Clean Texas Program**

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

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

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