

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1164-IWD-E **TCEQ ID:** RN100219120 **CASE NO.:** 40051  
**RESPONDENT NAME:** Unimin Corporation

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Unimin Texas Company Troup Facility 1, located approximately one mile southwest of the intersection of Farm-to-Market Road 856 and Farm-to-Market Road 13, and 1.8 miles northwest of Concord, Cherokee County</p> <p><b>TYPE OF OPERATION:</b> Ball clay mine with an associated wastewater treatment plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 20, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Andrew G. Bradley, Senior Vice President of Operations, Unimin Corporation, 258 Elm Street, New Caanan, Connecticut 06840  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 7, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 23, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WATER</b></p> <p>Failed to comply with permitted effluent limits for sulfate and total aluminum [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002973000, Effluent Limitations and Monitoring Requirements No. 1 for Outfalls 002, 005, and 006].</p>	<p><b>Total Assessed:</b> \$8,820</p> <p><b>Total Deferred:</b> \$1,764  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$7,056</p> <p><b>Compliance History Classification:</b>                      Person/CN – Average                      Site/RN – 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>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit amendment application;</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a;</p> <p>c. Within 90 days after the effective date of this Agreed Order, and on a semi-annual basis thereafter, submit a report to the Commission, documenting the progress of the corrective actions that are planned and/or have been completed to ensure the effluent meets the permitted limits. The reports shall be submitted until written certification of compliance with Ordering Provision d is submitted;</p> <p>d. Within 360 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0002973000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations; and</p> <p>e. The certifications required by these Ordering Provisions shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions b, c, and d.</p>

Additional ID No(s): WQ0002973000



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES:</b>	<b>Assigned</b>	28-Jun-2010	<b>Screening</b>	14-Jul-2010	<b>EPA Due</b>	
	<b>PCW</b>	16-Jul-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Unimin Corporation
<b>Reg. Ent. Ref. No.</b>	RN100219120
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>		<b>No. of Violations</b>	1
<b>Enf./Case ID No.</b>	40051	<b>Order Type</b>	1660
<b>Docket No.</b>	2010-1164-IWD-E	<b>Government/Non-Profit</b>	No
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Lanae Poard
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$6,000**

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

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

**Compliance History** **47.0%** Enhancement **Subtotals 2, 3, & 7** **\$2,820**

**Notes** Enhancement for nine months of self-reported effluent violations and one dissimilar Notice of Violation ("NOV").

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement **Subtotal 6** **\$0**

Total EB Amounts **\$683**  
 Approx. Cost of Compliance **\$5,000**  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$8,820**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** **\$8,820**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$8,820**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$1,764**

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

**Notes**

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$7,056**

Screening Date 14-Jul-2010

Docket No. 2010-1164-IWD-E

PCW

Respondent Unimin Corporation

Policy Revision 2 (September 2002)

Case ID No. 40051

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100219120

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	9	45%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of</i>	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<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)** 47%

>> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for nine months of self-reported effluent violations and one dissimilar Notice of Violation ("NOV").

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 47%

Screening Date 14-Jul-2010

Docket No. 2010-1164-IWD-E

PCW

Respondent Unlimn Corporation

Policy Revision 2 (September 2002)

Case ID No. 40051

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100219120

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002973000, Effluent Limitations and Monitoring Requirements No. 1 for Outfalls 002, 005, and 006

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on June 7, 2010, and shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Sulfate and total aluminum were considered to determine whether the discharged amounts of pollutants exceeded protective levels. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 6

89 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$6,000

Six quarterly events are recommended for Outfall 002 (three quarters), Outfall 005 (two quarters), and Outfall 006 (one quarter).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$6,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,536

Violation Final Penalty Total \$8,820

This violation Final Assessed Penalty (adjusted for limits) \$8,820

# Economic Benefit Worksheet

**Respondent:** Unimin Corporation

**Case ID No.:** 40051

**Reg. Ent. Reference No.:** RN100219120

**Media:** Water Quality

**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description**   No. comments of \$

**Delayed Costs**

Equipment			0.00	\$0	\$0	\$0	
Buildings			0.00	\$0	\$0	\$0	
Other (as needed)			0.00	\$0	\$0	\$0	
Engineering/construction	\$25,000	30-Apr-2009	12-Apr-2011	1.95	\$163	\$3,251	\$3,414
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	\$1,250	30-Apr-2009	12-Apr-2011	1.95	\$122	n/a	\$122
Other (as needed)			0.00	\$0	n/a	\$0	

Notes for DELAYED costs

Estimated cost to evaluate and address the causes of noncompliance. Date required is the first date of noncompliance. Final date is estimated 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

\$26,250

**TOTAL**

\$3,536

<b>EFFLUENT VIOLATION TABLE</b> <b>Unimin Corporation</b> <b>TPDES Permit No. WQ0002973000</b> <b>Docket No. 2010-1164-IWD-E</b>			
Permitted Effluent Limits	Monitoring Period End Date		
	4/30/09	10/31/09	2/28/10
<b>Outfall 002</b>			
Sulfate Daily Avg. Limit = 600 mg/L	814	1052	805
Sulfate Daily Max. Limit = 900 mg/L	c	1220	c
<b>Outfall 005</b>			
Sulfate Daily Avg. Limit = 600 mg/L	c	1200	870
Sulfate Daily Max. Limit = 900 mg/L	c	1200	c
<b>Outfall 006</b>			
Total Aluminum Daily Avg. Limit = 1.246 mg/L	c	1.78	c

max. = maximum

c = compliant

avg. = average

mg/L = milligrams per liter



# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600795777	Unimin Corporation	Classification: AVERAGE	Rating: 1.98
Regulated Entity:	RN100218120	UNIMIN TEXAS COMPANY TROUP FACILITY I	Classification: AVERAGE	Site Rating: 0.60
ID Number(s):	WASTEWATER	PERMIT	WQ0002973000	
	WASTEWATER	EPA ID	TX0104175	
	WASTEWATER	EPA ID	TX0118214	
	AIR NEW SOURCE PERMITS	PERMIT	17448	
	AIR NEW SOURCE PERMITS	REGISTRATION	29471	
	AIR NEW SOURCE PERMITS	REGISTRATION	40623	
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	CJ0053G	
	AIR NEW SOURCE PERMITS	AFS NUM	4807300020	
	STORMWATER	PERMIT	TXR05V667	
	WATER QUALITY NON PERMITTED	ID NUMBER	TXR051608	
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	CJ0053G	

Location: Approximately one mile southwest of the intersection of Farm-to-Market Road 856 and Farm-to-Market Road 13, and 1.8 miles northwest of the Town of Concord, Cherokee County, Texas.

TCEQ Region: REGION 05 - TYLER  
 Date Compliance History Prepared: July 09, 2010  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: July 09, 2005 to July 09, 2010

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

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/18/2005	(446562)
2	07/18/2005	(446563)
3	09/19/2005	(446564)
4	11/07/2005	(479297)
5	11/28/2005	(438542)
6	12/15/2005	(479298)
7	12/15/2005	(479299)
8	12/15/2005	(479300)
9	04/24/2006	(505086)
10	04/24/2006	(505087)
11	04/24/2006	(505088)
12	08/22/2006	(527392)
13	08/22/2006	(527393)
14	08/22/2006	(527394)
15	08/22/2006	(527395)
16	08/22/2006	(527396)
17	11/30/2006	(551145)
18	11/30/2006	(551146)
19	11/30/2006	(551147)
20	01/29/2007	(551148)
21	04/09/2007	(587745)
22	04/09/2007	(587746)
23	04/09/2007	(587749)

24	05/11/2007	(587747)
25	06/18/2007	(587748)
26	07/10/2007	(588848)
27	08/24/2007	(605183)
28	08/24/2007	(605184)
29	08/24/2007	(605185)
30	12/27/2007	(676446)
31	12/27/2007	(676447)
32	12/27/2007	(676448)
33	01/17/2008	(628527)
34	01/17/2008	(628528)
35	03/05/2008	(676445)
36	05/20/2008	(694906)
37	05/20/2008	(694907)
38	06/13/2008	(694908)
39	08/23/2008	(716396)
40	08/23/2008	(716397)
41	10/10/2008	(716398)
42	12/10/2008	(731860)
43	12/10/2008	(731861)
44	12/10/2008	(731862)
45	12/19/2008	(710153)
46	01/27/2009	(755270)
47	02/12/2009	(755269)
48	03/25/2009	(737446)
49	05/04/2009	(772361)
50	05/04/2009	(772362)
51	05/15/2009	(772363)
52	06/10/2009	(772364)
53	08/20/2009	(817109)
54	08/20/2009	(817110)
55	09/03/2009	(817111)
56	10/12/2009	(817112)
57	11/20/2009	(817113)
58	12/02/2009	(817114)
59	01/12/2010	(817115)
60	02/08/2010	(817108)
61	06/25/2010	(825994)

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

Date: 08/31/2005 (479297) CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 02/28/2006 (505087) CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 08/31/2006 (551145) CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 07/31/2007 (605185) CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 10/31/2008 (731861) CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/25/2009 (737446) CN600795777  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)  
 30 TAC Chapter 116, SubChapter B 116.115(c)  
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.8(a)  
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT 000 60.675(a)  
 NSR Permit 17448, SC. 3 PERMIT  
 Description: Failure to conduct an initial performance test within 180 days after Unmin acquired the facility on October 13, 1999. The initial performance test should have be conducted by April 10, 2000.

Date: 03/31/2009 (772362) CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 04/30/2009 (772363) CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 10/31/2009 (817113) CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 02/28/2010 CN600795777  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
UNIMIN CORPORATION  
RN100219120

§  
§  
§  
§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2010-1164-IWD-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Unimin Corporation ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a ball clay mine with an associated wastewater treatment plant located approximately one mile southwest of the intersection of Farm-to-Market Road 856 and Farm-to-Market Road 13, and 1.8 miles northwest of Concord in Cherokee County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 28, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eight Thousand Eight Hundred Twenty Dollars (\$8,820) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Seven Thousand Fifty-Six Dollars (\$7,056) of the administrative penalty and One Thousand Seven Hundred Sixty-Four Dollars (\$1,764) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002973000, Effluent Limitations and Monitoring Requirements No. 1 for Outfalls 002, 005, and 006, as documented during a record review conducted on June 7, 2010, and as shown in the following violation table:

<b>EFFLUENT VIOLATION TABLE</b>			
<b>Permitted Effluent Limits</b>	<b>Monitoring Period End Date</b>		
	<b>4/30/09</b>	<b>10/31/09</b>	<b>2/28/10</b>
<b>Outfall 002</b>			
<b>Sulfate Daily Avg. Limit = 600 mg/L</b>	814	1052	805
<b>Sulfate Daily Max. Limit = 900 mg/L</b>	c	1220	c
<b>Outfall 005</b>			
<b>Sulfate Daily Avg. Limit = 600 mg/L</b>	c	1200	870
<b>Sulfate Daily Max. Limit = 900 mg/L</b>	c	1200	c
<b>Outfall 006</b>			
<b>Total Aluminum Daily Avg. Limit = 1.246 mg/L</b>	c	1.78	c

max. = maximum                      mg/L = milligrams per liter  
 c = compliant                         avg. = average

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Unimin Corporation, Docket No. 2010-1164-IWD-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days of the effective date of this Agreed Order, submit an administratively complete permit amendment application to:

Application Review and Processing Team  
Water Quality Division, MC148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.e below;
- c. Within 90 days after the effective date of this Agreed Order, and on a semi-annual basis thereafter, submit a report to the Commission, documenting the progress of the corrective actions that are planned and/or have been completed to ensure the effluent meets the permitted limits. The reports shall be submitted to the addresses listed in Ordering Provision No. 2.e below and shall be submitted on a semi-annual basis until written certification of compliance with Ordering Provision No. 2.d is submitted;
- d. Within 360 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0002973000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations, in accordance with Ordering Provision No. 2.e below; and
- e. The certifications required by these Ordering Provisions shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.b, 2.c, and 2.d. The certifications 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 based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be mailed to:

Order Compliance Team  
Enforcement Division, MC149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

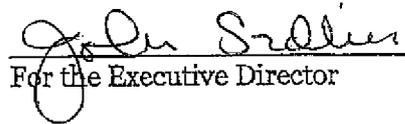
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

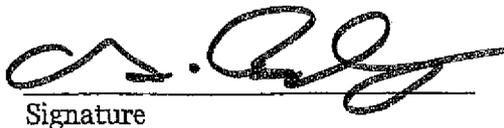
\_\_\_\_\_  
Date 11/22/2010

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 10/22/10

Andrew G. Brodley  
Name (Printed or typed)  
Authorized Representative of  
Unimin Corporation

\_\_\_\_\_  
Title SUP Operations

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

