

Page 1 of 3

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1395-MLM-E **TCEQ ID:** RN104543780 **CASE NO.:** 40280  
**RESPONDENT NAME:** Austin Equipment Company, LC

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Austin Equipment Site, 501 County Road ("CR") 344, northwest of CR 344 and CR 305, Williamson County</p> <p><b>TYPE OF OPERATION:</b> Rock quarry</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on March 1, 2010, alleging that the Respondent was excavating near the front of the site. A second complaint was received on May 19, 2010, alleging that a crossing on Salado Creek was causing water to back up onto a neighboring property, damaging a fence. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> Two complaints were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 11, 2011. 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. Evette Alvarado, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2573; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. John W. Schuler, Manager, Austin Equipment Company, LC, 1405 East Riverside Drive, Austin, Texas 78741  <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 checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> March 1, 2010 and May 19, 2010</p> <p><b>Date of Investigation Relating to this Case:</b> April 26, June 24, and July 8, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 6, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failed to obtain approval of a modification to an Edwards Aquifer water pollution abatement plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer recharge zone [30 TEX. ADMIN. CODE § 213.4(a)(1) and (j) and WPAP No. 11-05022201B, Standard Conditions No. 4].</p> <p>2) Failed to immediately abate and contain spills or discharges of petroleum products. Specifically, spills were noted on the ground in front of the aboveground storage tanks, around the vehicle maintenance area, and from an open 55-gallon drum [30 TEX. ADMIN. CODE § 327.5(a)].</p> <p><b>WASTE</b></p> <p>1) Failed to properly dispose of lead-acid batteries. Specifically, at least eight discarded lead-acid batteries were observed at various locations on the ground at the Site [TEX. HEALTH &amp; SAFETY CODE § 361.451 and 30 TEX. ADMIN. CODE § 328.13].</p> <p>2) Failed to properly store industrial solid waste which resulted in a discharge of industrial solid waste into or adjacent to waters in the state. Specifically, 24 open-topped, 55-gallon</p>	<p><b>Total Assessed:</b> \$17,060</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$1,316 (remaining \$15,744 due in 12 monthly payments of \$1,312 each)</p> <p><b>Compliance History Classifications:</b>                      Person/CN - Poor                      Site/RN - Poor</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>Findings Orders Justification:</b></p> <p>The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. By July 8, 2010, removed the discarded lead-acid batteries from the ground and stored them properly prior to recycling, and implemented procedures to ensure that all lead-acid batteries are disposed of properly;</p> <p>b. By July 12, 2010, excavated and containerized areas of contaminated soil at the Site;</p> <p>c. By September 7, 2010, initiated monthly employee environmental compliance training, which includes procedures on proper spill abatement and containment measures; and</p> <p>d. By November 22, 2010, analyzed the contents of and properly disposed of the 55-gallon drums and the accumulated liquids within them.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 60 days after the effective date of this Agreed Order, submit a WPAP modification for the vehicle maintenance building; and</p> <p>b. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

<p>drums of unknown contents were being stored northeast of the vehicle maintenance area. All of the open drums had an accumulation of liquid in them, and the contents of one drum had spilled onto the ground [30 TEX. ADMIN. CODE § 335.4].</p>		
--	--	--

Additional ID No(s): Edwards Aquifer 11-05022201, 11-05022201A, B, and C



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	9-Aug-2010	<b>Screening</b>	18-Aug-2010	<b>EPA Due</b>	
	<b>PCW</b>	7-Jan-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Austin Equipment Company, LC		
<b>Reg. Ent. Ref. No.</b>	RN104543780		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	40280	<b>No. of Violations</b>	4
<b>Docket No.</b>	2010-1395-MLM-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Industrial and Hazardous Waste	<b>Enf. Coordinator</b>	Evette Alvarado
		<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** **\$8,500**

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

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

**Compliance History** **111.0%** Enhancement **Subtotals 2, 3, & 7** **\$9,435**

Notes: Enhancement for two NOV's with same/similar violations, one NOV with dissimilar violations, two agreed orders with denial of liability, one agreed order without denial of liability, repeat violator status, and poor performer classification. Reduction for one notice of intent to conduct an environmental audit.

**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** **\$875**

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

Total EB Amounts \$534  
Approx. Cost of Compliance \$17,550  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$17,060**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** **\$17,060**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$17,060**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$0**

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** **\$17,060**

**Screening Date** 18-Aug-2010

**Docket No.** 2010-1395-MLM-E

**PCW**

**Respondent** Austin Equipment Company, LC

Policy Revision 2 (September 2002)

**Case ID No.** 40280

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN104543780

**Media [Statute]** Edwards Aquifer

**Enf. Coordinator** Evette Alvarado

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	2	40%
	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	1	25%
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 judgments 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> )	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

Please Enter Yes or No

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

**Adjustment Percentage (Subtotal 2)** 76%

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

Yes

**Adjustment Percentage (Subtotal 3)** 25%

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

Poor Performer

**Adjustment Percentage (Subtotal 7)** 10%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for two NOVs with same/similar violations, one NOV with dissimilar violations, two agreed orders with denial of liability, one agreed order without denial of liability, repeat violator status, and poor performer classification. Reduction for one notice of intent to conduct an environmental audit.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 111%

Screening Date 18-Aug-2010

Docket No. 2010-1395-MLM-E

PCW

Respondent Austin Equipment Company, LC

Policy Revision 2 (September 2002)

Case ID No. 40280

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104543780

Media [Statute] Edwards Aquifer

Enf. Coordinator Evette Alvarado

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 327.5(a)

Violation Description

Failed to immediately abate and contain spills or discharges of petroleum products, as documented during investigations conducted on April 26, June 24, and July 8, 2010. Specifically, spills were noted on the ground in front of the above-ground storage tanks, around the vehicle maintenance area, and from an open 55-gallon drum.

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

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation which do not exceed protective levels as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

77 Number of violation days

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 (April 26, 2010) to the compliance date (July 12, 2010).

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes The Respondent returned to compliance by July 12, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$34

Violation Final Penalty Total \$1,860

This violation Final Assessed Penalty (adjusted for limits) \$1,860

# Economic Benefit Worksheet

**Respondent** Austin Equipment Company, LC  
**Case ID No.** 40280  
**Req. Ent. Reference No.** RN104543780  
**Media** Edwards Aquifer  
**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	\$250	26-Apr-2010	12-Jul-2010	0.21	\$3	n/a	\$3
Remediation/Disposal	\$3,000	26-Apr-2010	12-Jul-2010	0.21	\$32	n/a	\$32
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to remove and properly dispose of contaminated soil (\$3,000) and to conduct employee training on proper spill abatement and containment measures (\$250). Date required is the investigation date. Final date is the date of compliance.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$3,250

**TOTAL**

\$34

Screening Date 18-Aug-2010

Docket No. 2010-1395-MLM-E

PCW

Respondent Austin Equipment Company, LC

Policy Revision 2 (September 2002)

Case ID No. 40280

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104543780

Media [Statute] Edwards Aquifer

Enf. Coordinator Evette Alvarado

Violation Number 3

Rule Cite(s)

Tex. Health & Safety Code § 361.451 and 30 Tex. Admin. Code § 328.13

Violation Description

Failed to properly dispose of lead-acid batteries, as documented during an investigation conducted on June 24, 2010. Specifically, at least eight discarded lead-acid batteries were observed at various locations on the ground at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

14 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended from the investigation date (June 24, 2010) to the compliance date (July 8, 2010).

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes The Respondent returned to compliance by July 8, 2010.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$4,650

This violation Final Assessed Penalty (adjusted for limits) \$4,650

## Economic Benefit Worksheet

**Respondent** Austin Equipment Company, LC  
**Case ID No.** 40280  
**Req. Ent. Reference No.** RN104543780  
**Media** Edwards Aquifer  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$250	24-Jun-2010	8-Jul-2010	0.04	\$0	n/a	\$0
Remediation/Disposal	\$50	24-Jun-2010	8-Jul-2010	0.04	\$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**

Estimated cost to properly store lead-acid batteries prior to recycling (\$50) and to conduct employee training on proper lead-acid battery disposal methods (\$250). Date required is the investigation date. Final date is the date of compliance.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$300

**TOTAL** \$1

Screening Date 18-Aug-2010

Docket No. 2010-1395-MLM-E

PCW

Respondent Austin Equipment Company, LC

Policy Revision 2 (September 2002)

Case ID No. 40280

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104543780

Media [Statute] Edwards Aquifer

Enf. Coordinator Evette Alvarado

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 335.4

Violation Description

Failed to properly store industrial solid waste which resulted in a discharge of industrial solid waste into or adjacent to waters in the state, as documented during investigations conducted on June 24 and July 8, 2010. Specifically, 24 open-topped, 55-gallon drums of unknown contents were being stored northeast of the vehicle maintenance area. All of the open drums had an accumulation of liquid in them, and the contents of one drum had spilled onto the ground.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

55 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the investigation date (June 24, 2010) to the screening date (August 18, 2010).

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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$258

Violation Final Penalty Total \$2,110

This violation Final Assessed Penalty (adjusted for limits) \$2,110

## Economic Benefit Worksheet

**Respondent** Austin Equipment Company, LC  
**Case ID No.** 40280  
**Req. Ent. Reference No.** RN104543780  
**Media** Edwards Aquifer  
**Violation No.** 4

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$3,000	24-Jun-2010	14-Feb-2011	0.64	\$97	n/a	\$97
Remediation/Disposal	\$5,000	24-Jun-2010	14-Feb-2011	0.64	\$161	n/a	\$161
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated cost to sample the contents of the drums (\$3,000) and dispose of the contents properly (\$5,000). Date required is the date the violation was documented. Final date is the estimated date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**

<b>Approx. Cost of Compliance</b>	\$8,000	<b>TOTAL</b>	\$258
-----------------------------------	---------	--------------	-------

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602523250 Austin Equipment Company, LC Classification: POOR Rating: 54.93  
Regulated Entity: RN104543780 AUSTIN EQUIPMENT SITE Classification: POOR Site Rating: 261.40  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 80080  
REGISTRATION  
EDWARDS AQUIFER REGISTRATION 11-05022201  
EDWARDS AQUIFER REGISTRATION 11-05022201A  
EDWARDS AQUIFER REGISTRATION 11-05022201B  
EDWARDS AQUIFER REGISTRATION 11-05022201C  
Location: 501 COUNTY ROAD 344, NW OF CR 344 & CR 305, WILLIAMSON CO., TX  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: September 07, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 07, 2005 to September 07, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Evette Alvarado Phone: (512) 239 - 2573

## 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: 9/1/2010 Repeat Violator: YES

## 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: 03/08/2008 ADMINORDER 2007-1371-EAQ-E

Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
Rqmt Prov: ID No. 50222.01 PERMIT  
Description: Failure to maintain a copy of the WPAP on site.

Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(j)(2)  
Description: Failure to obtain approval for site plan modifications.

Effective Date: 11/06/2008 ADMINORDER 2008-0288-MLM-E

Classification: Moderate  
Citation: 30 TAC Chapter 327 327.5(a)  
Description: Failure to immediately abate and contain spills or releases of oil.

Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
Rqmt Prov: WPAP No. 05022201, Factors Affecting WQ PERMIT  
Description: Failed to comply with the approved WPAP by allowing vehicle maintenance to be performed outside the shop area.

Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
Rqmt Prov: WPAP No. 05022201, PPAM PERMIT  
Description: Failed to prevent regulated activities within a protective 50 foot stream buffer.  
Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

Rqmt Prov: WPAP No. 05022201 PERMIT

Description: Failure to install and maintain temporary sediment controls.

Classification: Major

Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)

Rqmt Prov: WPAP No. 05022201, SC No. 4 PERMIT

Description: Failure to obtain approval of a WPAP modification prior to initiating construction of aggregate washing ponds.

Effective Date: 06/18/2010

ADMINORDER 2009-0918-MLM-E

Classification: Major

Citation: 30 TAC Chapter 327 327.5(a)

Rqmt Prov: 2.b ORDER

Description: Failed to immediately abate and contain spills or discharges of petroleum products.

Specifically, oil stains were observed on the ground in the aboveground storage tank ("AST") area behind the scale house.

Classification: Major

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

Rqmt Prov: 2.a ORDER

Attachment A PERMIT

Description: Failed to comply with the terms of the approved Edwards Aquifer Water Pollution Abatement Plan ("WPAP") by allowing vehicle maintenance to be performed outside the shop area. Specifically, vehicle maintenance was being conducted behind the scale house.

Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

Rqmt Prov: Standard Conditions No. 6 PERMIT

Description: Failed to install and maintain temporary erosion and sedimentation controls. Specifically, the investigator observed uncontained rock berms at the Salado Creek and tributary crossings, an improperly installed silt fence with holes and tears in the fabric at the Salado Creek crossing, and a torn and sagging silt fence near the 50 foot tributary buffer.

Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

TWC Chapter 26 26.121

Rqmt Prov: Attachment I PERMIT

Description: Failed to prevent the discharge of industrial waste into or adjacent to water in the state. Specifically, a discarded silt fence and quarried rock accumulations were observed in the bed of Salado Creek and sediment, a triangular filter dike, and quarried rock accumulations were observed in a tributary of Salado Creek.

Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

Rqmt Prov: Special Condition No. III PERMIT

Description: Failed to comply with the terms of the approved WPAP regarding the drainage area of the water quality pond. Specifically, the investigator observed that there were no berms, swales, or other methods used to divide the approved 10 acre drainage area for the water quality pond from the 18 acre mining area.

Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)

30 TAC Chapter 213, SubChapter A 213.5(b)(4)(D)(ii)(II)

Rqmt Prov: Perm. Poll. Abatement Measures PERMIT

Description: Failed to construct permanent best management practices ("BMPs") as designed. Specifically, the water quality pond on site was not constructed as a sedimentation and filtration basin as designed and approved, in that there was no splitter basin or outflow structure present, nor was there evidence that the pond was lined.

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 01/08/2007 (519135)

2 03/10/2009 (681414)

3 06/04/2009 (683865)

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

Date: 01/09/2007 (519135) CN602523250  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
 Description: Failure to maintain a copy of the WPAP and AST on the site.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 327 327.5(a)  
 Description: Failure to immediately abate and contain spills or discharges of petroleum products.  
 A small oil spill, perhaps less than one gallon, was observed near the new rock crusher assembly work area.  
 Failure to immediately abate and contain spills or discharges of petroleum products.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
 Description: Failure to maintain temporary sediment controls.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
 Description: Failure to update the storm water pollution prevention plan (SWPPP) material inventory for paint, gear oil, etc.

Date: 04/13/2007 (543456) CN602523250  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
 Description: Failure to maintain a copy of the WPAP and AST on the site.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
 Description: Failure to update the storm water pollution prevention plan (SWPPP) material inventory for paint, gear oil, etc.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 213, SubChapter A 213.5(f)(2)(A)  
 Description: Failure to notify the Austin Regional Office of a sensitive feature encountered during regulated activities.

Date: 03/08/2010 (787704) CN602523250  
 Self Report? NO Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)  
 Description: Unauthorized discharge of industrial waste into or adjacent to water in the state.

F. Environmental audits.

10/09/2009 (780196)

Notice of Intent Date:

No DOV Associated

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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>AUSTIN EQUIPMENT COMPANY, LC</b>	<b>§</b>	
<b>RN104543780</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**AGREED ORDER**  
**DOCKET NO. 2010-1395-MLM-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Austin Equipment Company, LC ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The 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, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement 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 the Respondent.

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

**I. FINDINGS OF FACT**

1. The Respondent owns and operates a rock quarry at 501 County Road ("CR") 344, northwest of CR 344 and CR 305 in Williamson County, Texas (the "Site").

2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Site involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
4. During an investigation on April 26, 2010, TCEQ staff documented that a vehicle maintenance building had been constructed at the Site without approval through an Edwards Aquifer water pollution abatement plan ("WPAP") modification.
5. During investigations on April 26, June 24, and July 8, 2010, TCEQ staff documented spills of petroleum product on the ground in front of the above-ground storage tanks ("ASTs"), around the vehicle maintenance area, and from an open 55-gallon drum.
6. During an investigation on June 24, 2010, TCEQ staff observed eight discarded lead-acid batteries on the ground at various locations throughout the Site.
7. During investigations on June 24 and July 8, 2010, TCEQ staff observed 24 open-topped, 55-gallon drums of unknown contents stored northeast of the vehicle maintenance area. All of the drums had an accumulation of liquid in them and the contents of one drum had spilled onto the ground.
8. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
  - a. By July 8, 2010, removed the discarded lead-acid batteries from the ground and stored them properly prior to recycling, and implemented procedures to ensure that all lead-acid batteries are disposed of properly;
  - b. By July 12, 2010, excavated and containerized areas of contaminated soil at the Site;
  - c. By September 7, 2010, initiated monthly employee environmental compliance training, which includes procedures on proper spill abatement and containment measures; and
  - d. By November 22, 2010, analyzed the contents of and properly disposed of the 55-gallon drums and the accumulated liquids within them.
9. The Respondent received notice of the violations on August 10, 2010.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Findings of Fact No. 4, the Respondent failed to obtain approval of a modification to an Edwards Aquifer WPAP prior to beginning a regulated activity over the Edwards Aquifer recharge zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1) and (j) and WPAP No. 11-05022201B, Standard Conditions No. 4.
3. As evidenced by Findings of Fact No. 5, the Respondent failed to immediately abate and contain spills or discharges of petroleum products, in violation of 30 TEX. ADMIN. CODE § 327.5(a).
4. As evidenced by Findings of Fact No. 6, the Respondent failed to properly dispose of lead-acid batteries, in violation of TEX. HEALTH & SAFETY CODE § 361.451 and 30 TEX. ADMIN. CODE § 328.13.
5. As evidenced by Findings of Fact No. 7, the Respondent failed to properly store industrial solid waste which resulted in a discharge of industrial solid waste into or adjacent to waters in the state, in violation of 30 TEX. ADMIN. CODE § 335.4.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code 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 Seventeen Thousand Sixty Dollars (\$17,060) 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. The Respondent has paid One Thousand Three Hundred Sixteen Dollars (\$1,316) of the administrative penalty. The remaining amount of Fifteen Thousand Seven Hundred Forty-Four Dollars (\$15,744) of the administrative penalty shall be payable in 12 monthly payments of One Thousand Three Hundred Twelve Dollars (\$1,312) each. The next monthly 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 until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Seventeen Thousand Sixty Dollars (\$17,060) as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Austin Equipment Company, LC, Docket No. 2010-1395-MLM-E" to:

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

2. The Respondent shall undertake the following technical requirements:
  - a. Within 60 days after the effective date of this Agreed Order, submit a WPAP modification for the vehicle maintenance building to the following address:

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

- b. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I

am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be submitted to:

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

with a copy to:

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

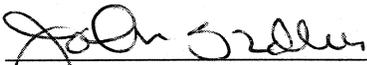
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the 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, 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.
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. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

\_\_\_\_\_  
Date 3/23/2011

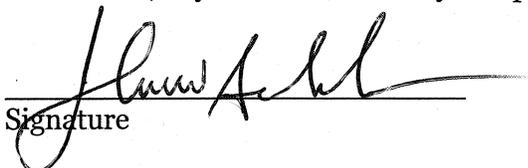
I, the undersigned, have read and understand the attached Agreed Order in the matter of Austin Equipment Company, LC. I am authorized to agree to the attached Agreed Order on behalf of Austin Equipment Company, LC, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Austin Equipment Company, LC waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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 1-27-11

John W. Schuber  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Austin Equipment Company, LC

\_\_\_\_\_  
Title Manager

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