

Executive Summary – Enforcement Matter – Case No. 38914
MAGIC VALLEY CONCRETE LLC
RN104693148
Docket No. 2009-2072-WQ-E

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
WQ

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
710 East Chaplin Road, Edinburg, Hidalgo County

Type of Operation:
concrete batch plant

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

Texas Register Publication Date: April 22, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$9,894

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$464

Total Due to General Revenue: \$9,430

Payment Plan: 23 payments of \$410

SEP Conditional Offset: N/A

Name of SEP: N/A

Compliance History Classifications:

Person/CN – Average

Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: October 22, 2009
Date(s) of NOV(s): July 31, 2009
Date(s) of NOE(s): December 7, 2009

Violation Information

1. Failed to conduct annual employee training in 2008 [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.5.(f)].
2. Failed to conduct quarterly site inspections for the final quarter of 2008 and the first three quarters of 2009 [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.5.(g)].
3. Failed to conduct the annual comprehensive compliance site evaluation in 2008 [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.7].
4. Failed to submit the non-storm water certification within 180 days of filing a Notice of Intent for permit coverage [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.3.(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Submitted records demonstrating annual employee training is being conducted;
2. Submitted documents demonstrating quarterly site inspections are being conducted; and
3. Submitted documents demonstrating annual comprehensive site evaluations are being conducted.

Technical Requirements:

1. Either:
 - a. Immediately, provide the Executive Director with notice to conduct operations at the Facility;
or
 - b. Submit notice to conduct operations at the Facility by 9:00 a.m. on the first business day following commencement of operations at the Facility.
2. Within 30 days, submit certification that states the Facility's separate storm sewer system has been evaluated for the presence of non-storm water discharges, and that the discharge of non-permitted, non-storm water does not occur.
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: August 25, 2010
Date Answer(s) Filed: September 1, 2010
SOAH Referral Date: October 21, 2010

Executive Summary – Enforcement Matter – Case No. 38914
MAGIC VALLEY CONCRETE LLC
RN104693148
Docket No. 2009-2072-WQ-E

Hearing Date(s):

Preliminary hearing: December 16, 2010 (re-set for January 13, 2011)

Evidentiary hearing: April 15, 2011 (remanded April 13, 2011)

Settlement Date: March 24, 2011

Contact Information

TCEQ Attorneys: James Sallans, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Steve Villatoro, Water Enforcement Section, (512) 239-4930

TCEQ Regional Contact: David Ramirez, Harlingen Regional Office, MC R-15, (956) 430-6048

Respondent: Rufino Garza, President, Magic Valley Concrete LLC, 7301 W. Expressway 83,
Mission, Texas 78572

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	11-Mar-2010	Screening	11-Mar-2010	EPA Due	
	PCW	24-Feb-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Magic Valley Concrete LLC
Reg. Ent. Ref. No.	RN104693148
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38914	No. of Violations	4
Docket No.	2009-2072-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steve Villatoro
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$425
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Notes: The penalty is enhanced due to one NOV with same violations as those cited in this action.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1,043
 Approx. Cost of Compliance: \$1,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,925
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OTHER FACTORS AS JUSTICE MAY REQUIRE	10.9%	Adjustment	\$969
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture avoided costs.

Final Penalty Amount	\$9,894
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,894
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$9,894
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Screening Date 11-Mar-2010

Docket No. 2009-2072-WQ-E

PCW

Respondent Magic Valley Concrete LLC

Policy Revision 2 (September 2002)

Case ID No. 38914

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104693148

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

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>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%

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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to one NOV with same violations as those cited in this action.

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

Screening Date 11-Mar-2010
Respondent Magic Valley Concrete LLC
Case ID No. 38914
Reg. Ent. Reference No. RN104693148
Media [Statute] Water Quality
Enf. Coordinator Steve Villatoro

Docket No. 2009-2072-WQ-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit No. TXR05S230, Part III, Section A.5.(f)

Violation Description Failed to conduct annual employee training in 2008, as documented during an investigation conducted on October 22, 2009.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes Human health or the environment will or could be exposed to a significant amount of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input checked="" type="text" value="x"/>
single event	<input type="text"/>

Violation Base Penalty

One annual event is recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Magic Valley Concrete LLC
Case ID No. 38914
Req. Ent. Reference No. RN104693148
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)	\$500	13-Jul-2009	30-Nov-2010	1.38	\$2	\$46	\$48
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational procedures to ensure that requirements of the storm water pollution prevention plan will be fulfilled in the future. Date required is the date the violation was initially documented. 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]	\$250	31-Dec-2008	13-Jul-2009	1.45	\$18	\$250	\$268
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct employee training . Date required is the date the training was due. Final date is the date the violation was initially documented.

Approx. Cost of Compliance

\$750

TOTAL

\$317

Screening Date 11-Mar-2010
Respondent Magic Valley Concrete LLC
Case ID No. 38914
Reg. Ent. Reference No. RN104693148
Media [Statute] Water Quality
Enf. Coordinator Steve Villatoro

Docket No. 2009-2072-WQ-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actua	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	Potentia	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>>Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Magic Valley Concrete LLC
Case ID No. 38914
Req. Ent. Reference No. RN104693148
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

see economic benefit for violation number one.

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]	\$400	31-Dec-2008	30-Sep-2009	1.67	\$33	\$400	\$433
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct and document inspections to determine the effectiveness of the pollution prevention measures and controls. Date required is the date the first inspection was due. Final date is the date the last inspection was due.

Approx. Cost of Compliance

\$400

TOTAL

\$433

Screening Date 11-Mar-2010

Docket No. 2009-2072-WQ-E

PCW

Respondent Magic Valley Concrete LLC

Policy Revision 2 (September 2002)

Case ID No. 38914

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104693148

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.7

Violation Description

Failed to conduct the annual comprehensive compliance site evaluation in 2008, as documented during an investigation conducted on October 22, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to a significant amount of pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 660 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

mark only one with an x

Violation Base Penalty \$2,500

One annual event is recommended.

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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$268

Violation Final Penalty Total \$2,910

This violation Final Assessed Penalty (adjusted for limits) \$2,910

Economic Benefit Worksheet

Respondent Magic Valley Concrete LLC
Case ID No. 38914
Req. Ent. Reference No. RN104693148
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation number one.

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]	\$250	31-Dec-2008	13-Jul-2009	1.45	\$18	\$250	\$268
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct a comprehensive compliance site evaluation. Date required is the date the evaluation was due. Final date is the date the violation was initially documented.

Approx. Cost of Compliance

\$250

TOTAL

\$268

Screening Date 11-Mar-2010
Respondent Magic Valley Concrete LLC
Case ID No. 38914
Reg. Ent. Reference No. RN104693148
Media [Statute] Water Quality
Enf. Coordinator Steve Villatoro

Docket No. 2009-2072-WQ-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.3.(c)

Violation Description

Failed to submit the non-storm water certification within 180 days of filing a Notice of Intent for permit coverage, as documented during an investigation conducted on October 22, 2009.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

100% of the permit requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	mark with x)

Notes

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Magic Valley Concrete LLC
Case ID No. 38914
Req. Ent. Reference No. RN104693148
Media Water Quality
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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	17-May-2007	30-Nov-2010	3.54	\$1	\$24	\$25
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit the non-storm water certification to the TCEQ. Date required is the date the certification was due. 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

\$100

TOTAL

\$25

Compliance History Report

Customer/Respondent/Owner-Operator: CN603255613 Magic Valley Concrete LLC Classification: AVERAGE Rating: 2.36
Regulated Entity: RN104693148 MAGIC VALLEY CONCRETE- EDINBURG Classification: AVERAGE Site Rating: 1.50
ID Number(s): STORMWATER PERMIT TXR05S230
PETROLEUM STORAGE TANK REGISTRATION 77905
REGISTRATION
Location: 710 East Chapin Road, Edinburg, Hidalgo County, Texas
78541
TCEQ Region: REGION 15 - HARLINGEN
Date Compliance History Prepared: March 10, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 10, 2005 to March 10, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Steve Villatoro Phone: 512-239-4930

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? Yes
3. If Yes, who is the current owner/operator? Magic Valley Concrete LLC
4. If Yes, who was/were the prior owner(s)/operator(s) ? Magic Valley Concrete, LTD.
5. When did the change(s) in owner or operator occur? 11/19/2006
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, 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 | 07/28/2009 | (762035) |
| 2 | 12/04/2009 | (779423) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|-----------------|-------------|
| Date: | 07/31/2009 | (762035) | CN601425804 |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TXR05S230, MSGP, Part II.C.3 PERMIT | | |
| Description: | Failure to properly develop and implement a storm water pollution prevention plan | | |
- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MAGIC VALLEY CONCRETE LLC;
RN104693148**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2009-2072-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Magic Valley Concrete 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 appear before the Commission and together stipulate that:

1. Respondent owns and operates a concrete batch plant located at 710 East Chaplin Road in Edinburg, Hidalgo County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in Tex. Water Code § 26.001(5).
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 Executive Director 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 nine thousand eight hundred ninety-four dollars (\$9,894.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid four hundred sixty-four dollars (\$464.00) of the administrative penalty. The remaining amount of nine thousand four hundred thirty dollars (\$9,430.00) of the administrative penalty shall be payable in twenty-three (23) monthly payments of four hundred ten dollars (\$410.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately

due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

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 recognizes that Respondent implemented the following corrective measures at the Facility on December 16, 2010:
 - a. Submitted records demonstrating annual employee training has been conducted and are being maintained in accordance with 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit No. TXR05S230, Part III, Section A.5.(f) (Allegation 1.a.);
 - b. Submitted documents demonstrating quarterly site inspections are being conducted and are available in accordance with 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.5.(g) (Allegation 1.b.); and
 - c. Submitted documents demonstrating annual comprehensive site evaluations are being conducted and are available in accordance with 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.7. (Allegation 1.c.).
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 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

1. During an investigation conducted on October 22, 2009, a TCEQ Harlingen Regional Office investigator documented that Respondent violated:
 - a. 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.5.(f), by failing to conduct annual employee

training in 2008. Specifically, Respondent had not conducted annual employee training for 2008;

- b. 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.5.(g), by failing to conduct quarterly site inspections for the final quarter of 2008 and the first three quarters of 2009. Specifically, Respondent had not conducted the quarterly site inspections for the periods documented during the investigation;
 - c. 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.7., by failing to conduct the annual comprehensive compliance site evaluation in 2008. Specifically, Respondent had not conducted the 2008 annual comprehensive compliance site evaluation; and
 - d. 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.3.(c), by failing to submit the non-storm water certification within 180 days of filing a Notice of Intent for permit coverage.
2. Respondent received notice of the violations on or about December 12, 2009.

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. 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 actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Magic Valley Concrete LLC, Docket No. 2009-2072-WQ-E" to:

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

2. Respondent shall undertake the following technical requirements:
 - a. Either:
 - i. Immediately upon the effective date of this Agreed Order, Respondent shall provide the Executive Director with notice to conduct operations at the Facility in the manner provided in the Facility's TPDES Multi-Sector General Permit; or

- ii. Submit notice to conduct operations at the Facility by 9:00 a.m. on the first business day following the commencement of operations at the Facility.

Notices shall be submitted to:

Water Section Manager, Harlingen Regional Office
Texas Commission on Environmental Quality
1804 W. Jefferson Avenue
Harlingen, Texas 78550-5247

and

Chris Linendoll, E.I.T.
Waste Water Permitting Section Manager
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Agreed Order, Respondent shall submit certification that the Facility's separate storm sewer system has been evaluated for the presence of non-storm water discharges, and that the discharge of non permitted, non-storm water does not occur, in accordance with 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Multi-Sector General Permit No. TXR05S230, Part III, Section A.3.(c) (Allegation 1.d.).
- c. 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 Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and shall 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
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and

Water Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 W. Jefferson Avenue
Harlingen, Texas 78550-5247

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. 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.
6. 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.
7. 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive

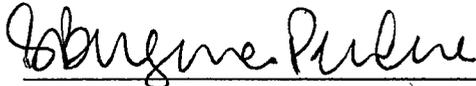
Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/10/2011

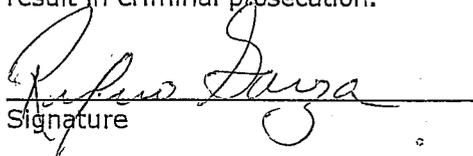
Date

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 Magic Valley Concrete 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

3-24-11
Date

RUFINO GARZA
Rufino Garza, President
Magic Valley Concrete LLC