

Executive Summary – Enforcement Matter – Case No. 43764
COBRA STONE, INC.
RN105485460
Docket No. 2012-0586-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – EAQ, IHW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Stone Quarry 1, located on County Road 239, 1.4 miles from the intersection of County Road 239 and State Highway 195, Williamson County

Type of Operation:

Stone quarry

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: September 28, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$10,375

Amount Deferred for Expedited Settlement: \$2,075

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$8,300

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Poor

Major Source: Yes

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

**Executive Summary – Enforcement Matter – Case No. 43764
COBRA STONE, INC.
RN105485460
Docket No. 2012-0586-MLM-E**

Investigation Information

Complaint Date(s): January 4, 2012

Complaint Information: Alleged that pallets were being disposed of at the Site.

Date(s) of Investigation: January 18, 2012

Date(s) of NOE(s): February 23, 2012

Violation Information

1. Failed to obtain approval of a modification to a Water Pollution Abatement Plan (“WPAP”) prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the quarry pit has been extended past the area included in the WPAP approved October 26, 2010. The dimensions of the unauthorized area of the quarry pit are approximately 150 feet by 150 feet [30 TEX. ADMIN. CODE § 213.4(j)(3) and WPAP No. 11-08043006B Standard Conditions No. 4].

2. Failed to prevent the unauthorized disposal of industrial solid waste. Specifically, there were approximately 12 to 15 pallets, both painted and unpainted, as well as foam board and mesh wiring, discarded in the quarry [30 TEX. ADMIN. CODE § 335.4].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures at the Site:

- a. By January 28, 2012, updated operational procedures and conducted employee training to ensure that all industrial solid waste at the Site is properly disposed of;
- b. By February 10, 2012, removed and properly disposed of the industrial solid waste from within the quarry pit; and
- c. By June 18, 2012, filled the unauthorized area of the quarry and returned it to the condition described in the WPAP approved October 26, 2010.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

**Executive Summary – Enforcement Matter – Case No. 43764
COBRA STONE, INC.
RN105485460
Docket No. 2012-0586-MLM-E**

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Lanae Foard, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-2554; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Pedro Aguado, President, COBRA STONE, INC., P.O. Box 705, Jarrell,
Texas 76537

Fabian Hernandez, Vice-President, COBRA STONE, INC., P.O. Box 705, Jarrell, Texas
76537

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	27-Feb-2012	Screening	12-Mar-2012	EPA Due	
	PCW	18-Jun-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	COBRA STONE, INC.		
Reg. Ent. Ref. No.	RN105485460		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	43764	No. of Violations	1
Docket No.	2012-0586-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 *Capped at the Total EB \$ Amount
 Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 12-Mar-2012

Docket No. 2012-0586-MLM-E

PCW

Respondent COBRA STONE, INC.

Policy Revision 3 (September 2011)

Case ID No. 43764

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105485460

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Lanae Foard

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>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

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) 20%

>> 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 one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 12-Mar-2012

Docket No. 2012-0586-MLM-E

PCW

Respondent COBRA STONE, INC.

Policy Revision 3 (September 2011)

Case ID No. 43764

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105485460

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Lanae Foard

Violation Number 1

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

Violation Description Failed to prevent the unauthorized disposal of industrial solid waste, as documented during an investigation conducted on January 18, 2012. Specifically, there were approximately 12 to 15 pallets, both painted and unpainted, as well as foam board and mesh wiring, discarded in the quarry.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual				X	5.0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 54

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the investigation date (January 18, 2012) to the date of compliance (February 10, 2012).

Good Faith Efforts to Comply

10.0% Reduction \$125

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

Notes The Respondent achieved compliance on February 10, 2012.

Violation Subtotal \$1,125

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$1,375

This violation Final Assessed Penalty (adjusted for limits) \$1,375

Economic Benefit Worksheet

Respondent COBRA STONE, INC.
Case ID No. 43764
Reg. Ent. Reference No. RN105485460
Media Industrial and Hazardous Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	18-Jan-2012	28-Jan-2012	0.03	\$0	n/a	\$0
Remediation/Disposal	\$500	18-Jan-2012	10-Feb-2012	0.06	\$2	n/a	\$2
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to update operational procedures and conduct employee training to ensure that all industrial solid waste at the Facility is properly disposed of and to remove and properly dispose of the industrial solid waste within the quarry. Date required is the investigation date. Final dates are the date employee training was conducted and the date the waste was removed from within the quarry.

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	\$750	TOTAL	\$2
----------------------------	-------	--------------	-----



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	27-Feb-2012	Screening	12-Mar-2012	EPA Due	
	PCW	18-Jun-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	COBRA STONE, INC.				
Reg. Ent. Ref. No.	RN105485460				
Facility/Site Region	11-Austin	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	43764	No. of Violations	1
Docket No.	2012-0586-MLM-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$7,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 20.0% Enhancement Subtotals 2, 3, & 7 \$1,500

Notes: Enhancement for one order with denial of liability.

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: \$104
Approx. Cost of Compliance: \$5,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$9,000

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$9,000

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$9,000

DEFERRAL 20.0% Reduction Adjustment -\$1,800

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 \$7,200

Screening Date 12-Mar-2012

Docket No. 2012-0586-MLM-E

PCW

Respondent COBRA STONE, INC.

Policy Revision 3 (September 2011)

Case ID No. 43764

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105485460

Media [Statute] Edwards Aquifer

Enf. Coordinator Lanae Foard

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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

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) 20%

>> 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 one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 12-Mar-2012

Docket No. 2012-0586-MLM-E

PCW

Respondent COBRA STONE, INC.

Policy Revision 3 (September 2011)

Case ID No. 43764

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105485460

Media [Statute] Edwards Aquifer

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(J)(3) and Water Pollution Abatement Plan ("WPAP") No. 11-08043006B Standard Conditions No. 4

Violation Description Failed to obtain approval of a modification to a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on January 18, 2012. Specifically, the quarry pit has been extended past the area included in the WPAP approved October 26, 2010. The dimensions of the unauthorized area of the quarry pit are approximately 150 feet by 150 feet.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification			Percent
	Major	Moderate	Minor	
	x			15.0%
100% of the rule requirement was not met.				

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2 Number of violation days 54

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$7,500

Two monthly events are recommended from the investigation date (January 18, 2012) to the screening date (March 12, 2012).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$104

Violation Final Penalty Total \$9,000

This violation Final Assessed Penalty (adjusted for limits) \$9,000

Economic Benefit Worksheet

Respondent COBRA STONE, INC.
Case ID No. 43764
Reg. Ent. Reference No. RN105485460
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	18-Jan-2012	18-Jun-2012	0.42	\$104	n/a	\$104

Notes for DELAYED costs

Estimated cost to fill the unauthorized area of the quarry and return it to the condition described in the WPAP approved on October 26, 2010. 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

\$5,000

TOTAL

\$104

Compliance History Report

Customer/Respondent/Owner-Operator: CN603299223 Cobra Stone, Inc. Classification: AVERAGE Rating: 11.05
Regulated Entity: RN105485460 STONE QUARRY 1 Classification: POOR Site Rating: 51.25
ID Number(s): STORMWATER PERMIT TXR05X373
EDWARDS AQUIFER REGISTRATION 11-08043006B
EDWARDS AQUIFER REGISTRATION 11-08043006B
EDWARDS AQUIFER REGISTRATION 11-08043006
EDWARDS AQUIFER REGISTRATION 11-08043006A
Location: County Road 239, 1.4 miles from the intersection of County Road 239 and State Highway 195, Williamson County, Texas
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: April 11, 2012
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 11, 2007 to April 11, 2012
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. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 12/20/2008

ADMINORDER 2008-0855-MLM-E

Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)

Description: Failed to obtain coverage to discharge industrial storm water from a stone quarry under TPDES Multi-Sector General Permit No. TXR050000.

Classification: Major

Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
30 TAC Chapter 213, SubChapter A 213.5(a)(4)

Description: Failed to obtain approval of an AST Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone.

Classification: Moderate

Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
30 TAC Chapter 213, SubChapter A 213.5(a)(1)

Description: Failure to obtain authorization of an Edwards Aquifer Water Pollution Abatement Plan

(WPAP).

- 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 04/16/2008 (640504)

2 06/10/2009 (738727)

3 06/06/2011 (912797)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
COBRA STONE, INC.
RN105485460

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2012-0586-MLM-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding COBRA STONE, INC. ("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 together stipulate that:

1. The Respondent owns and operates a stone quarry located on County Road 239, 1.4 miles from the intersection of County Road 239 and State Highway 195, Williamson County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission. The Site involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Executive Director 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 February 28, 2012.
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 Ten Thousand Three Hundred Seventy-Five Dollars (\$10,375) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Thousand Three Hundred Dollars (\$8,300) of the administrative penalty and Two Thousand Seventy-Five Dollars (\$2,075) 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 agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
 - a. By January 28, 2012, updated operational procedures and conducted employee training to ensure that all industrial solid waste at the Site is properly disposed of;
 - b. By February 10, 2012, removed and properly disposed of the industrial solid waste from within the quarry pit; and
 - c. By June 18, 2012, filled the unauthorized area of the quarry and returned it to the condition described in the Water Pollution Abatement Plan ("WPAP") approved October 26, 2010.
10. 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.
11. 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.
12. 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 Site, the Respondent is alleged to have:

1. Failed to obtain approval of a modification to a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(j)(3) and WPAP No. 11-08043006B Standard Conditions No. 4, as documented

during an investigation conducted on January 18, 2012. Specifically, the quarry pit has been extended past the area included in the WPAP approved October 26, 2010. The dimensions of the unauthorized area of the quarry pit are approximately 150 feet by 150 feet.

2. Failed to prevent the unauthorized disposal of industrial solid waste, in violation of 30 TEX. ADMIN. CODE § 335.4, as documented during an investigation conducted on January 18, 2012. Specifically, there were approximately 12 to 15 pallets, both painted and unpainted, as well as foam board and mesh wiring, discarded in the quarry.

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: COBRA STONE, INC., Docket No. 2012-0586-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 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.
3. 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.
4. 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.

5. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam J. Jansen
For the Executive Director

11/16/12
Date

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.

Pedro Aguado
Signature

7/10/12
Date

Pedro Aguado
Name (Printed or typed)
Authorized Representative of
COBRA STONE, INC.

President
Title

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.