

Executive Summary – Enforcement Matter – Case No. 43813
Erasmus Lopez, Jr. dba Lopez Ready Mix Concrete
RN104443866
Docket No. 2012-0696-WQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Lopez Ready Mix Concrete, 600 North West Street, Rio Grande City, Starr County

Type of Operation:

Concrete batch plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 28, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$20,462

Amount Deferred for Expedited Settlement: \$4,092

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$620

Total Due to General Revenue: \$15,750

Payment Plan: 35 payments of \$450 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN – Average by default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 43813
Erasmio Lopez, Jr. dba Lopez Ready Mix Concrete
RN104443866
Docket No. 2012-0696-WQ-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: February 7, 2011 and February 17, 2012

Date(s) of NOE(s): April 8, 2011

Violation Information

1. Failed to maintain and implement the Storm Water Pollution Prevention Plan ("SWP3"). Specifically, the Respondent did not implement any structural controls, good housekeeping practices, or preventative measures resulting in a release of aggregate which had accumulated outside of the boundaries of the Site and onto the street [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(c)].
2. Failed to conduct quarterly storm water monitoring for the last quarter of 2008, all four quarters of 2009, all four quarters of 2010, and the first quarter of 2011, as specified in the permit [30 TEX. ADMIN. CODE §§ 281.25(a)(4) and 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section B(2)].
3. Failed to conduct, at a minimum, monthly inspections of designated equipment and areas of the Site for the months of December 2009 through November 2010. Specifically, the Respondent did not conduct the required monthly inspections [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(c)(4)].
4. Failed to conduct employee training at the interval specified in the Site's SWP3 for 2008 and 2009. Specifically, the Respondent did not perform the 2008 and 2009 annual employee training [30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(c)(5)].
5. Failed to conduct the annual comprehensive site compliance evaluation. Specifically, the Respondent did not evaluate the Site for 2008 and 2009 [30 TEX. ADMIN. CODE §§ 281.25(a)(4) and 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent completed the following actions:

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- a. By December 31, 2010, began conducting monthly inspections and annual evaluations at the Facility, updated operational procedures and conducted employee training to ensure that requirements of the SWP3 will be fulfilled in the future; and
- b. By April 28, 2011, began conducting quarterly monitoring of storm water discharges.

Technical Requirements:

The Order will require Respondent to:

- a. Within 30 days, develop and implement an SWP3 that addresses and implements structural controls, good housekeeping practices, and preventative measures; and
- b. Within 45 days, submit written certification demonstrating compliance.

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

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Jennifer Graves, Enforcement Division,
Enforcement Team 1, MC R-15, (956) 430-6023; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Erasmo Lopez, Jr., Owner, Lopez Ready Mix Concrete, 600 North West
Street, Rio Grande City, Texas 78582

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Mar-2012	Screening	15-Mar-2012	EPA Due	
	PCW	19-Oct-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	Erasmio Lopez, Jr. dba Lopez Ready Mix Concrete				
Reg. Ent. Ref. No.	RN104443866				
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	43813	No. of Violations	5
Docket No.	2012-0696-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jennifer Graves
		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** **\$21,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

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** **\$3,500**

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

Total EB Amounts	\$3,833
Approx. Cost of Compliance	\$9,150

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$17,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE 16.9% **Adjustment** **\$2,962**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to collect avoided costs associated with Violation Nos. 2, 3, 4, and 5.

Final Penalty Amount **\$20,462**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$20,462**

DEFERRAL 20.0% Reduction **Adjustment** **-\$4,092**

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 **\$16,370**

Screening Date 15-Mar-2012

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PCW

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete

Policy Revision 2 (September 2002)

Case ID No. 43813

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104443866

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

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>)	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) 0%

>> **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

No adjustment for compliance history.

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

Screening Date 15-Mar-2012

Docket No. 2012-0696-WQ-E

PCW

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete

Policy Revision 2 (September 2002)

Case ID No. 43813

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104443866

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(c)

Violation Description Failed to maintain and implement the Storm Water Pollution Prevention Plan ("SWP3"), as documented during the February 17, 2012, record review. Specifically, the Respondent did not implement any structural controls, good housekeeping practices, or preventative measures resulting in a release of aggregate which had accumulated outside of the boundaries of the Site and onto the street.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			X	10%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 37

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 based on the record review date (February 17, 2012) to the screening date (March 15, 2012).

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer \$0

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 \$809

Violation Final Penalty Total \$1,169

This violation Final Assessed Penalty (adjusted for limits) \$1,169

Economic Benefit Worksheet

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete

Case ID No. 43813

Reg. Ent. Reference No. RN104443866

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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$5,000	7-Feb-2011	31-May-2013	2.31	\$39	\$771	\$809
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 maintain and implement a SWP3, including good housekeeping practices, structural controls, and preventative measures. Date required is the initial investigation date. 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

\$5,000

TOTAL

\$809

Screening Date 15-Mar-2012

Docket No. 2012-0696-WQ-E

PCW

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete

Policy Revision 2 (September 2002)

Case ID No. 43813

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104443866

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 281.25(a)(4) and 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section B(2)

Violation Description

Failed to conduct quarterly storm water monitoring for the last quarter of 2008, all four quarters of 2009, all four quarters of 2010, and the first quarter of 2011 as specified in the permit.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 10

911 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$10,000

Ten single events are recommended, one for each quarter that storm water monitoring was not conducted.

Good Faith Efforts to Comply

10.0% Reduction

\$1,000

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

Notes The Respondent came into compliance by April 28, 2011.

Violation Subtotal \$9,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,169

Violation Final Penalty Total \$10,523

This violation Final Assessed Penalty (adjusted for limits) \$10,523

Economic Benefit Worksheet

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete
Case ID No. 43813
Reg. Ent. Reference No. RN104443866
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	\$1,000	7-Feb-2011	28-Apr-2011	0.22	\$11	n/a	\$11
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

The estimated cost to conduct quarterly monitoring of the storm water discharges. Date required is the initial 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]	\$1,000	31-Dec-2008	31-Mar-2011	3.16	\$158	\$1,000	\$1,158
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct quarterly monitoring of the storm water discharges. Date required is the first quarter that the storm water monitoring was due. Final date is the date the last quarter that the stormwater monitoring was due.

Approx. Cost of Compliance

\$2,000

TOTAL

\$1,169

Screening Date 15-Mar-2012

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PCW

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete

Policy Revision 2 (September 2002)

Case ID No. 43813

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104443866

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXG110905 Part III, Permit Requirements Section F(2)(c)(4)

Violation Description

Failed to conduct, at a minimum, monthly inspections of designated equipment and areas of the Site for the months of December 2009 through November 2010, as documented during the February 17, 2012 record review. Specifically, the Respondent did not conduct the required monthly inspections.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 12

365 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$6,000

Twelve single events are recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$1,500

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

Notes The Respondent achieved compliance by December 31, 2010.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$982

Violation Final Penalty Total \$5,262

This violation Final Assessed Penalty (adjusted for limits) \$5,262

Economic Benefit Worksheet

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete
Case ID No. 43813
Reg. Ent. Reference No. RN104443866
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
<small>No commas or \$</small>							

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 No. 4.

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]	\$900	31-Dec-2009	30-Nov-2010	1.83	\$82	\$900	\$982
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct monthly inspections (\$75 per inspection) of the designated equipment and areas of the Site. Date required is the date the first inspection was due. Final date is the date the last inspection was due.

Approx. Cost of Compliance \$900

TOTAL \$982

Screening Date 15-Mar-2012

Docket No. 2012-0696-WQ-E

PCW

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete

Policy Revision 2 (September 2002)

Case ID No. 43813

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104443866

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES General Permit No. TXG110905 Part III, Permit Requirements Section F(2)(c)(5)

Violation Description

Failed to conduct employee training at the interval specified in the Site's SWP3 for 2008 and 2009, as documented during the February 17, 2012 record review. Specifically, the Respondent did not perform the 2008 and 2009 annual employee training.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

731 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two annual events are recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$500

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

Notes

The Respondent achieved compliance by December 31, 2010.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$598

Violation Final Penalty Total \$1,754

This violation Final Assessed Penalty (adjusted for limits) \$1,754

Economic Benefit Worksheet

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete
Case ID No. 43813
Reg. Ent. Reference No. RN104443866
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
<i>No commas or \$</i>							

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	\$500	31-Dec-2008	31-Dec-2010	2.00	\$50	n/a	\$50
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 and conduct employee training to ensure that requirements of the SWP3 will be fulfilled in the future. Date required is the date the training was due. 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]	\$500	31-Dec-2008	31-Dec-2009	1.92	\$48	\$500	\$548
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct and document employee training. Date required is the date the first training was due. Final date is the date the last training was due.

Approx. Cost of Compliance

\$1,000

TOTAL

\$598

Screening Date 15-Mar-2012

Docket No. 2012-0696-WQ-E

PCW

Respondent Erasmo Lopez, Jr. dba Lopez Ready Mix Concrete

Policy Revision 2 (September 2002)

Case ID No. 43813

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104443866

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code §§ 281.25(a)(4) and 305.125(1) and TPDES General Permit No. TXG110905 Part III, Permit Requirements Section F(2)(d)

Violation Description

Failed to conduct the annual comprehensive site compliance evaluation, as documented during the February 17, 2012 record review. Specifically, the Respondent did not evaluate the Site for 2008 and 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

731 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two annual events are recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$500

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent achieved compliance by December 31, 2010.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$274

Violation Final Penalty Total \$1,754

This violation Final Assessed Penalty (adjusted for limits) \$1,754

Economic Benefit Worksheet

Respondent Erasmio Lopez, Jr. dba Lopez Ready Mix Concrete
Case ID No. 43813
Reg. Ent. Reference No. RN104443866
Media Water Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

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 No. 4.

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	31-Dec-2009	1.92	\$24	\$250	\$274
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct a complete annual comprehensive site compliance evaluation. Date required is the date the first evaluation was due. Final date is the date the last evaluation was due.

Approx. Cost of Compliance

\$250

TOTAL

\$274

Compliance History Report

Customer/Respondent/Owner-Operator: CN603868498 Lopez, Erasmo Jr. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN104443866 LOPEZ READY MIX CONCRETE Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s): WASTE WATER GENERAL PERMIT PERMIT TXG110905

Location: 600 N WEST ST, RIO GRANDE CITY, TX, 78582

TCEQ Region: REGION 15 - HARLINGEN

Date Compliance History Prepared: March 15, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 15, 2007 to March 15, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jennifer Graves Phone: (956) 430-6023

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?
YES Lopez Ready Mix Concrete, OWNER OPERATOR since 11/19/2008
YES LOPEZ, ERASMO, OWNER OPERATOR since 02/09/2012
4. If **YES**, who was/were the prior owner(s)/operator(s)?
Lopez Ready Mix Concrete, OPERATOR, 10/6/2004 to 11/19/2008
LOPEZ, ERASMO, OWNER OPERATOR, 2/9/2012 to 12/31/3000
5. If **YES**, when did the change(s) in owner or operator occur?
11/19/2008
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.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
ERASMO LOPEZ, JR. DBA LOPEZ	§	
READY MIX CONCRETE	§	
RN104443866	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2012-0696-WQ-E

I. JURISDICTION AND STIPULATIONS

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

1. The Respondent owns and operates a concrete batch plant located at 600 North West Street, Rio Grande City, Starr County, Texas (the "Site").
2. The Respondent has discharged other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 13, 2011.
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 Twenty Thousand Four Hundred Sixty-Two Dollars (\$20,462) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Twenty Dollars (\$620) of the administrative penalty and Four Thousand Ninety-Two Dollars (\$4,092) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Fifteen Thousand Seven Hundred Fifty Dollars (\$15,750) of the administrative penalty shall be payable in 35 monthly payments of Four Hundred Fifty Dollars (\$450) 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.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent:
 - a. By December 31, 2010:
 - i. Began conducting monthly inspections and annual evaluations at the Facility;
 - ii. Updated operational procedures and conducted employee training to ensure that requirements of the Storm Water Pollution Prevention Plan ("SWP3") will be fulfilled in the future; and
 - b. By April 28, 2011, began conducting quarterly monitoring of storm water discharges.
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 maintain and implement the SWP3, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(c), as documented during an investigation conducted on February 7, 2011 and a record review conducted on February 17, 2012. Specifically, the Respondent did not implement any structural controls, good housekeeping practices, or preventative measures resulting in a release of aggregate which had accumulated outside of the boundaries of the Site and onto the street.
2. Failed to conduct quarterly storm water monitoring for the last quarter of 2008, all four quarters of 2009, all four quarters of 2010, and the first quarter of 2011, as specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 281.25(a)(4) and 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section B(2), as documented during an investigation conducted on February 7, 2011 and a record review conducted on February 17, 2012.
3. Failed to conduct, at a minimum, monthly inspections of designated equipment and areas of the Site for the months of December 2009 through November 2010, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(c)(4), as documented during an investigation conducted on February 7, 2011 and a record review conducted on February 17, 2012. Specifically, the Respondent did not conduct the required monthly inspections.
4. Failed to conduct employee training at the interval specified in the Site's SWP3 for 2008 and 2009, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(c)(5), as documented during an investigation conducted on February 7, 2011 and a record review conducted on February 17, 2012. Specifically, the Respondent did not perform the 2008 and 2009 annual employee training.
5. Failed to conduct the annual comprehensive site compliance evaluation, in violation of 30 TEX. ADMIN. CODE §§ 281.25(a)(4) and 305.125(1) and TPDES General Permit No. TXG110905, Part III, Permit Requirements Section F(2)(d), as documented during an investigation conducted on February 7, 2011 and a record review conducted on February 17, 2012. Specifically, the Respondent did not evaluate the Site for 2008 and 2009.

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: Erasmus Lopez, Jr. dba Lopez Ready Mix Concrete, Docket No. 2012-0696-WQ-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, develop and implement an SWP₃ that addresses and implements structural controls, good housekeeping practices, and preventative measures in accordance with TPDES General Permit No. TXG110905, Permit Requirements Part III, Section F(2)(c); and
 - b. Within 45 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 No. 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 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 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
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

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. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature

could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Permit Javier J
For the Executive Director

2/18/17
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.

X [Signature]
Signature

11/05/12
Date

Erasmus R. Lopez Jr.
Name (Printed or typed)
Authorized Representative of
Erasmus Lopez, Jr. dba Lopez Ready Mix Concrete

Owner
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.