

**Executive Summary – Enforcement Matter – Case No. 50557
NEW NGC, INC.
RN105854335 and RN101294973
Docket No. 2015-0783-WQ-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

Rotan Quarry, 7601 Farm-to-Market Road 610, Rotan, Stonewall County

Rotan Gypsum Plant, 832 County Road 311, Rotan, Fisher County

Type of Operation:

Aggregate production operation ("APO")

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 16, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$10,000

Amount Deferred for Expedited Settlement: \$2,000

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$8,000

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications (RN105854335):

Person/CN - Satisfactory

Site/RN - High

Compliance History Classifications (RN101294973):

Person/CN - Satisfactory

Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: \$8,900

Applicable Penalty Policy: April 2014

**Executive Summary – Enforcement Matter – Case No. 50557
NEW NGC, INC.
RN105854335 and RN101294973
Docket No. 2015-0783-WQ-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: April 21, 2015
Date(s) of NOE(s): May 1, 2015

Violation Information

Failed to renew the APO registration annually as regulated activities continued. Specifically, APO Registration Nos. AP0000604 and AP0000587 expired on May 31, 2014 and the Respondent continued to operate [30 TEX. ADMIN. CODE § 342.25(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, submit applications to register the Sites as APOs; and
- b. Within 45 days, submit written certification to demonstrate compliance with 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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Had Darling, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2520; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483
TCEQ SEP Coordinator: N/A
Respondent: Samuel A. Schiffman, Vice President General Counsel and Secretary, NEW NGC, INC., 2001 Rexford Road, Charlotte, North Carolina 28211
Thomas Nelson, President, NEW NGC, INC., 2001 Rexford Road, Charlotte, North Carolina 28211
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	5-May-2015			
	PCW	27-May-2015	Screening	18-May-2015	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	NEW NGC, INC. (Rotan Quarry)
Reg. Ent. Ref. No.	RN105854335
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION						
Enf./Case ID No.	50557	No. of Violations	1			
Docket No.	2015-0783-WQ-E	Order Type	1660			
Media Program(s)	Aggregate Production Operation	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Had Darling			
		EC's Team	Enforcement Team 1			
Admin. Penalty \$ Limit	Minimum	\$5,000	Maximum	\$10,000	Violation Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$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	20.0% Enhancement	Subtotals 2, 3, & 7	\$100
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
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$61	*Capped at the Total EB \$ Amount	
Estimated Cost of Compliance	\$712		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$600
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
Reduces or enhances the Final Subtotal by the Indicated percentage.			
Notes			
	Final Penalty Amount	\$600	

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
Notes	The final assessed penalty has been adjusted to meet the statutory requirements of Tex. Water Code § 28A.102.	

DEFERRAL	20.0%	Reduction	Adjustment	-\$1,000
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	\$4,000
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Screening Date 18-May-2015

Docket No. 2015-0783-WQ-E

PCW

Respondent NEW NGC, INC. (Rotan Quarry)

Policy Revision 4 (April 2014)

Case ID No. 50557

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105854335

Media [Statute] Aggregate Production Operation

Enf. Coordinator Had Darling

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 judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	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)

Satisfactory 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 18-May-2015

Docket No. 2015-0783-WQ-E

PCW

Respondent NEW NGC, INC. (Rotan Quarry)

Policy Revision 4 (April 2014)

Case ID No. 50557

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105854335

Media [Statute] Aggregate Production Operation

Enf. Coordinator Had Darling

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §342.25(d)

Violation Description

Failed to renew the aggregate production operation ("APO") registration annually as regulated activities continued, as documented during an investigation conducted on April 21, 2015. Specifically, APO Registration No. AP0000604 expired on May 31, 2014 and the Respondent continued to operate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release Major Moderate Minor

Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification Major Moderate Minor

	X		
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Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

352 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction

\$0

	Before NOE/NOV	NOE/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 \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$61

Violation Final Penalty Total \$600

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent: NEW NGC, INC. (Rotan Quarry)
Case ID No.: 50557
Reg. Ent. Reference No.: RN105854335
Media: Aggregate Production Operation
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$712	31-May-2014	13-Feb-2016	1.71	\$61	n/a	\$61
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to register as an APO. Date required is the date the registration expired. Final date is the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$712

TOTAL

\$61



Compliance History Report

PUBLISHED Compliance History Report for CN602986499, RN105854335, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN602986499, NEW NGC, INC.

Classification: SATISFACTORY

Rating: 1.05

Regulated Entity: RN105854335, ROTAN QUARRY

Classification: HIGH

Rating: 0.00

Complexity Points: 5

Repeat Violator: NO

CH Group: 04 - Mining

Location: 7601 Farm-to-Market Road 610 in Rotan, Stonewall County, Texas

TCEQ Region: REGION 03 - ABILENE

ID Number(s):

STORMWATER PERMIT TXR05Z156

Compliance History Period: September 01, 2009 to August 31, 2014

Rating Year: 2014

Rating Date: 09/01/2014

Date Compliance History Report Prepared: June 23, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 23, 2010 to June 23, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Herbert Darling

Phone: (512) 239-2520

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 06/26/2010 ADMINORDER 2010-0206-WQ-E (1660 Order-Agreed Order With Denial)
Classification: Major
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: FC - Failure to obtain authorization to discharge storm water associated with industrial activities to water in the State through an individual permit or the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System (TPDES).

B. Criminal convictions:

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.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	5-May-2015			
	PCW	27-May-2015	Screening	18-May-2015	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	NEW NGC, INC. (Rotan Gypsum Plant)		
Reg. Ent. Ref. No.	RN101294973		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	50557	No. of Violations	1
Docket No.	2015-0783-WQ-E	Order Type	1660
Media Program(s)	Aggregate Production Operation	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Had Darling
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$5,000	Maximum	\$10,000
		Violation Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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	\$61
Estimated Cost of Compliance	\$712

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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Notes:

The final assessed penalty has been adjusted to meet the statutory requirements of Tex. Water Code § 28A.102.

DEFERRAL	20.0%	Reduction	Adjustment	-\$1,000
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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	\$4,000
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Screening Date: 18-May-2015

Docket No.: 2015-0783-WQ-E

PCW

Respondent: NEW NGC, INC. (Rotan Gypsum Plant)

Policy Revision 4 (April 2014)

Case ID No.: 50557

PCW Revision March 26, 2014

Reg. Ent. Reference No.: RN101294973

Media [Statute]: Aggregate Production Operation

Enf. Coordinator: Had Darling

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)	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 (number of judgments 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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date: 18-May-2015

Docket No.: 2015-0783-WQ-E

PCW

Respondent: NEW NGC, INC. (Rotan Gypsum Plant)

Policy Revision 4 (April 2014)

Case ID No.: 50557

PCW Revision March 26, 2014

Reg. Ent. Reference No.: RN101294973

Media [Statute]: Aggregate Production Operation

Enf. Coordinator: Had Darling

Violation Number: 1

Rule Cite(s)

30 Tex. Admin. Code § 342.25(d)

Violation Description

Failed to renew the aggregate production operation ("APO") registration annually as regulated activities continued, as documented during an investigation conducted on April 21, 2015. Specifically, APO Registration No. AP0000587 expired on May 31, 2014 and the Respondent continued to operate.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release Harm: Major Moderate Minor

Table with 3 columns: Major, Moderate, Minor. Rows: Actual, Potential.

Percent: 0.0%

>> Programmatic Matrix

Falsification Major Moderate Minor

Table with 4 columns: Major, Moderate, Minor. Row: Falsification. Value: x in Major.

Percent: 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment: \$9,500

\$500

Violation Events

Number of Violation Events: 1

352 Number of violation days

mark only one with an x

Table with 2 columns: Frequency, Count. Rows: daily, weekly, monthly, quarterly, semiannual, annual, single event. Value: x in single event.

Violation Base Penalty: \$500

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction

\$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Table with 2 columns: Before NOE/NOV, NOE/NOV to EDPRP/Settlement Offer. Rows: Extraordinary, Ordinary, N/A. Value: x in N/A.

Notes

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

Violation Subtotal: \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$61

Violation Final Penalty Total: \$500

This violation Final Assessed Penalty (adjusted for limits): \$5,000

Economic Benefit Worksheet

Respondent: NEW NGC, INC. (Rotan Gypsum Plant)
Case ID No.: 50557
Reg. Ent. Reference No.: RN101294973
Media: Aggregate Production Operation
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	\$712	31-May-2014	13-Feb-2016	1.71	\$61	n/a	\$61
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to register as an APO. Date required is the date the registration expired. Final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$712

TOTAL

\$61



Compliance History Report

PUBLISHED Compliance History Report for CN602986499, RN101294973, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN602986499, NEW NGC, INC.

Classification: SATISFACTORY

Rating: 1.05

Regulated Entity: RN101294973, ROTAN GYPSUM PLANT

Classification: UNCLASSIFIED

Rating: -----

Complexity Points: 9

Repeat Violator: NO

CH Group: 14 - Other

Location: 832 County Road 311 in Rotan, Fisher County, Texas

TCEQ Region: REGION 03 - ABILENE

ID Number(s):

AIR NEW SOURCE PERMITS PERMIT 8164

AIR NEW SOURCE PERMITS ACCOUNT NUMBER FD0009T

AIR NEW SOURCE PERMITS AFS NUM 4815100001

AIR NEW SOURCE PERMITS REGISTRATION 73380

AIR NEW SOURCE PERMITS PERMIT 73244

STORMWATER PERMIT TXR05AX78

AIR EMISSIONS INVENTORY ACCOUNT NUMBER FD0009T

Compliance History Period: September 01, 2009 to August 31, 2014

Rating Year: 2014

Rating Date: 09/01/2014

Date Compliance History Report Prepared: June 23, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 23, 2010 to June 23, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Herbert Darling

Phone: (512) 239-2520

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	May 07, 2013	(1086866)
Item 2	June 14, 2013	(1088817)
Item 3	April 23, 2015	(1240454)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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
NEW NGC, INC.	§	
RN105854335 AND RN101294973	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2015-0783-WQ-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 NEW NGC, INC. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 28A. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent is a responsible party as defined in TEX. WATER CODE § 28A.001(6), because it is an operator as defined in TEX. WATER CODE § 28A.001(4), of aggregate production operations ("APOs") located at 7601 Farm-to-Market Road 610 in Rotan, Stonewall County, Texas and 832 County Road 311 in Rotan, Fisher County, Texas (the "Sites"). Aggregates are being or have been removed or extracted from the Sites' earth. Therefore, the Sites are APOs as defined in TEX. WATER CODE § 28A.001(1).
2. 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.
3. The Respondent received notices of the violations alleged in Section II ("Allegations") on or about May 6, 2015.
4. 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.
5. An administrative penalty in the amount of Ten Thousand Dollars (\$10,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Thousand Dollars (\$8,000) of the administrative penalty

- and Two Thousand Dollars (\$2,000) 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.
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 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).
 8. 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.
 9. 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.
 10. 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 Sites, the Respondent is alleged to have failed to renew the APO registration annually as regulated activities continued, in violation of 30 TEX. ADMIN. CODE § 342.25(d), as documented during an investigation conducted on April 21, 2015. Specifically, APO Registration Nos. AP0000604 and AP0000587 expired on May 31, 2014 and the Respondent continued to operate.

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 5 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: NEW NGC, INC., Docket No. 2015-0783-WQ-E" to:

Financial Administration Division, Revenue Operations 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 the Agreed Order, submit applications to register the Sites as APOs, in accordance with 30 TEX. ADMIN. CODE § 342.25 to:

Water Quality Processing Center, MC 140
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

b. Within 45 days after the effective date of this Agreed Order, submit written certification 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
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

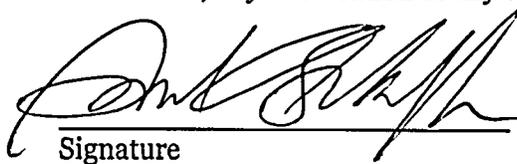
4/29/16
Date

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.


Signature

8/21/15
Date

Samuel A. Schiffman
Name (Printed or typed)
Authorized Representative of
NEW NGC, INC.

V.P. General Counsel & Secretary
Title

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