

**SOAH DOCKET NO. 582-07-2484
TCEQ DOCKET NO. 2006-1434-AIR-E**

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE STATE OFFICE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
Petitioner	§	
V.	§	OF
	§	
ADVANTAGE ASPHALT PRODUCTS,	§	
LTD.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) brought this enforcement action against Advantage Asphalt Products, Ltd. (Respondent or Advantage), seeking administrative penalties based on four complaints: failure to comply with opacity standards, failure to produce a permit and related records for an on-site rock crusher, failure to have water spray bars on all transfer points, and failure to amend a permit to include additional sources of emissions. The ED requested administrative penalties totaling \$13,800.00 and a requirement that Respondent implement corrective measures. The Administrative Law Judge (ALJ) agrees with the ED’s recommendation to assess an administrative penalty of \$13,800.00 and require corrective actions.

II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There were no contested issues of notice or jurisdiction in this case. Therefore those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

The hearing was convened on February 13, 2008, by ALJ Penny A. Wilkov at the hearing facilities of the State Office of Administrative Hearings, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The ED was represented by TCEQ Litigation Division Attorney Alfred A. Oloko. Respondent was represented by legal counsel, Brian R. Smith. The Office of Public Interest Counsel did not participate in the hearing. The record closed on March 7, 2008, after the filing of post-hearing briefs.

III. DISCUSSION

A. Background

A citizen complaint initiated an investigation into excessive dust emissions emanating from a portable rock crushing plant (Plant) with an open mining pit, the “Stockett Pit,” operated by Advantage Asphalt Products, Ltd., located near Claude, Armstrong County, Texas. Advantage had the following permit activity listed in the TCEQ database:¹

- December 3, 2003, Advantage was granted Permit No. 54119L002, authorizing the the Plant to operate an impact crusher under general and special conditions defining the level of operation and allowable emissions.²
- July 9, 2004, Advantage received a permit amendment authorizing an additional rock crushing screen.³

¹ ED Exhibit 6.

² ED Exhibit 2.

³ ED Exhibit 3.

- July 1, 2005, Advantage received a “Registration for Permit by Rule,” 30 TEXAS ADMIN. CODE §116.142, authorizing operation of a portable cone rock crusher at the Stockett Pit under conditions delineated by rule.⁴

At the hearing, the ED introduced evidence and presented the testimony of Joseph Campa, an Amarillo-based TCEQ air investigator, and Anne Inman, a TCEQ Rule Registration Manager. Respondent presented the testimony of Larry Scott Knutson, an Advantage Partner.

B. Stipulations

At the hearing and subsequently in writing, the parties entered into the following stipulations:

1. That Respondent violated 30 TEXAS ADMIN. CODE §§ 116.115(b)(2)(E)(i), (ii), and (c) and TEXAS HEALTH & SAFETY CODE § 382.085(b) by failing to have a copy of Air Permit No. 54229L001 and records for the rock crusher on site and to submit all records for the rock crusher when requested. The parties stipulated that Respondent would pay a \$1,200.00 penalty and implement appropriate corrective actions.
2. That Respondent violated 30 TEXAS ADMIN. CODE § 116.115(c) and TEXAS HEALTH & SAFETY CODE § 382.0518(a) by failing to have water spray bars on all transfer points. The parties stipulated that Respondent would pay a \$600.00 penalty and implement suitable corrective actions.
3. In the event that any of the other allegations have merit, the penalty amount assessed will be the amount calculated by the ED in the Penalty Calculation Worksheet along with proposed corrective actions.⁵

C. Legal Standards

As to the allegations still disputed, the Executive Director has charged Respondent with violating the provisions of TEXAS HEALTH & SAFETY CODE § 382.085(b) and 30 TEXAS ADMIN.

⁴ ED Exhibit 4.

⁵ ED's Exhibit 1.

CODE § 116.115(c). Section 382.085(b) of the Health and Safety Code provides the grounds for disciplinary action by the Commission. The applicable provision is set forth below:

(b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

In relevant part, 30 TEXAS ADMIN. CODE § 116.115(c) requires permit holders to comply with all special conditions contained in the permit document.

The Executive Director has also charged Respondent with violating TEXAS HEALTH & SAFETY CODE §§ 382.0518(a), 382.085(b) and 30 TEXAS ADMIN. CODE § 116.110(a). Section 382.0518(a) of the Health and Safety Code provides the general requirements for a preconstruction permit. The applicable provision is set forth below:

(a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission.

The applicable provision of 30 TEXAS ADMIN. CODE § 116.110(a) sets out general requirements for construction of a facility, providing that prior to constructing or modifying a facility which may emit air contaminants into the air, a person must either obtain a new permit or satisfy the conditions for a permit.

D. Did Respondent fail to comply with the special condition concerning opacity requirements listed in its Permit?

1. ED's Argument and Evidence

The allegation that Respondent failed to comply with opacity requirements relates to Permit Number 54119L002 (Permit) issued to Respondent on December 3, 2003. Specifically, Permit Special Condition No. 5 provides that no visible emissions exceeding 30 seconds in duration in any six-minute period shall leave the property emanating from the rock crusher, screens, engines, or transfer points as determined by a trained observer with delegation from the ED of TCEQ.⁶

The ED contended that Mr. Campa met the requirements of a “trained observer” by virtue of his TCEQ opacity training and investigation experience, including over 500 investigations he had conducted during 11 years of employment with TCEQ. Mr. Campa testified that he investigated an opacity violation at the Plant on November 16, 2005. He observed and photographed a large plume of visible particulate matter crossing the county road nearby and onto adjacent property continuously from 9:30 a.m. to 10:00 a.m.⁷ Mr. Campa testified that the county road served as the property boundary.

2. Respondent's Argument and Evidence

Respondent countered that there was no violation of 30 TEXAS ADMIN. CODE § 116.115(c) as alleged because the particulate matter plume never crossed the property line. Respondent pointed out that Permit Special Condition No. 5 required that “no visible emissions exceeding 30 seconds in duration in any six-minute period *shall leave the property . . .*” Mr. Knutson testified that the county road did run through the property but pointed out that he had an agreement to use the property

⁶ ED Exhibit 2.

⁷ ED Exhibit 8.

on the other side of the road. Therefore, Respondent argued that Mr. Stockett⁸ owned the property on the other side of the road and gave Advantage permission to use the property.

3. ALJ's Analysis

The preponderant evidence established that the Respondent was legally required to control the duration, location, and amount of visible emissions but failed to do so. The duration or amount of visible emissions was not challenged, particularly since photographic evidence dramatically showed opaque particulate matter drifting over a large area.

The source of contention of the parties, however, was whether the Permit was violated by the emissions crossing the county road, considering the adjacent landowner's apparent permission. The ALJ concludes that a county road is public property designated for the public benefit and not part of Advantage or Mr. Stockett's property. The Texas Transportation Code confirms that a public road or highway established according to law is a public road.⁹

Coyne v. Kaufman County, 144 S.W.3rd 129 (Tex.App–Eastland 2004, no pet.) graphically demonstrates the public interest in maintaining roads free from dust and dirt. In *Coyne*, the County became embroiled in a legal battle with residents unhappy with the conditions and maintenance of the county roads surrounding a rock company. Specifically, a lawsuit was filed by the residents of Kaufman County against Van Zandt Rock Company, several trucking companies, and Kaufman County for damages related to the care and maintenance of the county roads in the vicinity of the limestone pit. The suit alleged that the company and trucks were creating a nuisance by causing dust and dirt to be deposited on Plaintiffs' properties, partially due to the County's failure to widen, maintain, and pave the roads and failure to enforce traffic regulations. The Appellate Court ruled

⁸ Name otherwise unknown.

⁹ TEX. TRANSP. CODE § 251.002.

that the County was not shielded from all liability by sovereign immunity and remanded the case. *Coyne* emphasizes that county roads are public property, regardless of any permission by adjoining landowners.

The ALJ concludes that the ED established that Respondent failed to comply with opacity requirements contained in Permit Special Condition No. 5. For this violation, the parties stipulated that Respondent would pay a \$1,200.00 penalty and implement the proposed corrective actions.

E. Did Respondent fail to amend a permit to include additional sources of emissions?

1. ED's Argument and Evidence

This violation rests on the allegation that Respondent failed to amend a permit to include additional sources of emission, specifically that a cone rock crusher and a power screening plant were brought to the site without prior authorization. According to the ED, Advantage had a general permit to operate an impact rock crusher, a device that uses surface force to smash large rocks into smaller pieces. Apart from this device, Advantage applied for and was granted a permit by rule,¹⁰ authorizing limited use of a stand-alone cone rock crusher, a gyrating cone-shaped device used to break up rock.

During an inspection on June 30, 2006, Mr. Campa documented that the two rock crushers through conveyors were being operated together, described as “married together.” According to the ED, marrying the two crushers was a violation of the permit that authorized the use of only one rock crusher at one time for this facility.¹¹ Mr. Campa testified that in order to marry two rock crushers a permit amendment would be necessary and interested parties could protest the application. Further,

¹⁰ ED Exhibit 5.

¹¹ 30 TEXAS ADMIN. CODE § 116.142.

according to Mr. Campa, on June 30, 2006, he observed and photographed an unauthorized power screen.

Ms. Inman testified that the permit by rule was granted for a cone rock crusher on July 1, 2005, based on the application which described a stand-alone (primary) crusher with no reference to another (secondary) crusher. If the registration form had proposed the two rock crushers as married, according to Ms. Inman, then the permit by rule would not have been approved but rather an amendment would have been required. Further, the absence of water spray bars would have also invalidated the permit.

2. Respondent's Argument and Evidence

Respondent contends that it did not violate 30 TEXAS ADMIN. CODE §116.110(a), which involved not having a permit for modification of an existing facility. Rather, Respondent pointed out that each of the two rock crushers were separately permitted: one by general permit and the other by rule permit.

Mr. Knutson conceded that the crushers were married. He also explained that efforts were made to prevent dust, including wetting the dust with spray. He explained that a two-step process was instituted: first, the rocks were loaded into the cone crusher and compressed into small chunks and then the rocks were carried to the impact crusher to break the rock further. Mr. Knutson testified that prior to marrying the crushers, the rocks would fall on the ground and create more dust, but by putting a conveyor belt between the two crushers, it eliminated emissions. He also pointed out that the same amount of rock was used but it was crushed into smaller pieces. Mr. Knutson testified that because both crushers were permitted, he did not realize that Advantage was breaking the law. Mr. Knutson disagreed that there were four power screens. He claimed there were just three screens and

testified that they were used in multiple locations. He conceded that a fourth screen, however, was purchased three months ago.

3. ALJ's Analysis

The ALJ concludes that Respondent was obligated to amend the permit to include additional sources of emission. Although Respondent argued that each crusher was separately permitted and that therefore, there was no need to amend the permit for joint operation of the crushers, each permit clearly covered only the use of one crusher. The December 2003 letter from the ED, Margaret Hoffman, notifying Advantage of approval of its General Permit stated “the construction and operation of the facilities must be as represented in the application.”¹² Similarly, the permit by rule application contained Respondent’s description of one crusher, accompanied by a drawing of one crusher. The July 2005 letter from Ms. Inman approving the registration noted that the crusher is authorized “if constructed and operated as described in your registration request.”¹³ Neither application described two crushers joined together by a conveyor belt. Further, the initial reason for this investigation was a complaint alleging excessive dust emissions, verified by Mr. Campa that there were several occasions in 2006 where high opacity was photographed. The ALJ concludes that the preponderant evidence supports the allegation that increased emissions were directly attributable to the conjoined crushers. For this violation, the parties stipulated that Respondent would pay a \$10,800.00 penalty and implement appropriate corrective actions.

The required penalties and corrective actions are summarized as follows:

¹² ED Exhibit 2

¹³ ED Exhibit 4.

VIOLATION	STIPULATED PENALTY	STIPULATED CORRECTIVE ACTION
Failure to produce a permit and related records	\$1,200.00	Respondent shall immediately, upon the effective date of the Commission Order, begin maintaining a copy of appropriate permits and production records at the Plant; shall within 30 days after the effective date of the Commission Order, submit all records requested during the June 30, 2006 investigation, and provide additional personnel training and implement improvements to reporting procedures in order to timely submit complete and accurate records when requested; and, shall within 30 days after the effective date of the Commission Order, respond completely and adequately, as determined by TCEQ, to all requests for information concerning the permit application within 30 days after the date of such request, or by any other deadline specified in writing.
Failure to have water spray bars on all transfer points	\$600.00	Respondent shall within 30 days of the Commission Order, install spray bars on all transfer points.
Failure to comply with permitted opacity requirements	\$1,200.00	Respondent shall within 30 days after the effective date of the Commission Order, implement improvements to design, operation, or maintenance procedures, in order to address the opacity events that were documented on November 16, 2005, and to prevent the reoccurrence of same or similar incidents.
Failure to amend a permit to include additional sources of emissions	\$10,800.00	Respondent shall within 30 days after the effective date of the Commission Order, submit a request to amend permit No. 54119L002 to include both the unpermitted cone rock crusher and the power screening plants, or cease operation until such time the appropriate authorization is obtained, in accordance with 30 TEXAS ADMIN. CODE § 116.110(a); and Respondent shall, within 180 days after the effective date of the Commission Order, submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that construction or operation has ceased until such time that appropriate authorization is obtained.

The ALJ recommends that the Commission adopt the attached proposed order, including the Findings of Fact and Conclusions of Law, impose the stipulated administrative penalty on Respondent, and require the corrective actions described above.

SIGNED May 1, 2008.

PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Assessing Administrative Penalties
Against and Requiring Certain Actions of
Advantage Asphalt Products, Ltd.
SOAH DOCKET NO. 582-07-2484
TCEQ DOCKET NO. 2006-1434-AIR-E

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring certain corrective actions of Advantage Asphalt Products, Ltd. (Respondent). Penny A. Wilkov, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, represented by Brian R. Smith, and the Commission's Executive Director (ED), represented by Alfred A. Oloko, an attorney in TCEQ's Litigation Division.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. A citizen complaint initiated an investigation into excessive dust emissions emanating from a portable rock crushing plant operated by Respondent, located near Claude, Armstrong County, Texas.
2. Respondent had the following permit activity listed in the TCEQ database:
 - a. December 3, 2003, Respondent was granted Permit No. 54119L002, authorizing the the Plant to operate an impact crusher under general and special conditions defining the level of operation and allowable emissions;
 - b. July 9, 2004, Respondent received a permit amendment authorizing an additional rock crushing screen; and
 - c. July 1, 2005, Respondent received a “Registration for Permit by Rule,” 30 TEXAS ADMIN. CODE §116.142, authorizing operation of a portable cone rock crusher at the Stockett Pit under conditions delineated by rule.
3. Permit Number 54119L002 contained Special Condition No. 5, which provided that no visible emissions exceeding 30 seconds in duration in any six-minute period shall leave the property emanating from the rock crusher, screens, engines, or transfer points as determined by a trained observer with delegation from the ED of TCEQ.

4. Joseph Campa, a TCEQ investigator, was qualified as a TCEQ delegated trained observer by virtue of his TCEQ opacity training and 11 years of investigation experience.
5. On November 16, 2005, Mr. Campa observed and photographed a large plume of visible particulate matter emanating from the Respondent's property and crossing the county road nearby and onto adjacent property, continuously from 9:30 a.m. to 10:00 a.m.
6. A county road is public property designated for the public benefit and is not part of adjacent properties.
7. Respondent failed to comply with the opacity requirements contained in Permit Special Condition No. 5.
8. Respondent failed to amend its general permit to include the cone rock crusher and power screening plant, which were additional sources of emissions.
9. Permit Number 54119L002 authorized Respondent to operate an impact rock crusher.
10. A permit by rule was granted for a cone rock crusher on July 1, 2005, based on the application, which described a stand-alone (primary) crusher with no reference to another (secondary) crusher.
11. During an inspection on June 30, 2006, however, Mr. Campa documented that the two rock crushers were being operated together, described as "married together," through conveyors.
12. Marrying the two crushers was a violation of the general permit that authorized the use of only one rock crusher for this facility.
13. If the registration form had proposed marrying the two rock crushers then the permit by rule registration would have been denied by TCEQ.

14. In order to marry two rock crushers, a permit amendment would be necessary, thereby allowing interested parties to protest the application.
15. An unauthorized power screen was observed and photographed on June 30, 2006.
16. On July 27, 2007, the ED served Respondent with the Executive Director's First Amended Report and Petition (EDFARP), proposing a total penalty of \$13,800.00 for violations of 30 TEXAS ADMIN. CODE §§ 116.115(b)(2)(E)(i), (ii), and (c); TEXAS HEALTH & SAFETY CODE § 382.085(b), 30 TEXAS ADMIN. CODE § 116.115(c), TEXAS HEALTH & SAFETY CODE § 382.0518(a), TEXAS HEALTH & SAFETY CODE § 382.085(b), 30 TEXAS ADMIN. CODE § 116.115(c), TEXAS HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), and 30 TEXAS ADMIN. CODE § 116.110(a).
17. As established by the stipulation of the ED and Respondent, the appropriate and reasonable penalty, considering all statutorily required factors, for the alleged violation of 30 TEXAS ADMIN. CODE §§ 116.115(b)(2)(E)(i), (ii), and (c) and TEXAS HEALTH & SAFETY CODE § 382.085(b) is \$1,200.00.
18. As established by the stipulation of the ED and Respondent, the appropriate and reasonable penalty, considering all statutorily required factors, for the alleged violation of 30 TEXAS ADMIN. CODE § 116.115(c) and TEXAS HEALTH & SAFETY CODE § 382.0518(a) by failing to have water spray bars on all transfer points is \$600.00.
19. As established by the stipulation of the ED and Respondent, the appropriate and reasonable penalty, considering all statutorily required factors, for the alleged violation of TEXAS HEALTH & SAFETY CODE § 382.085(b) and 30 TEXAS ADMIN. CODE § 116.115(c) by failing

to comply with the opacity requirements as defined in Permit Number 54119L002 Special Condition No. 5 is \$1,200.00.

20. As established by the stipulation of the ED and Respondent, the appropriate and reasonable penalty, considering all statutorily required factors, for the alleged violation of TEXAS HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEXAS ADMIN. CODE § 116.110(a) by failing to amend its general permit to include the cone rock crusher and power screening plants as additional sources of emissions, is \$10,800.00.
21. On January 19, 2007, Respondent requested a contested case hearing on allegations in the EDPRP.
22. On April 3, 2007, the case was referred to SOAH for a hearing.
23. On April 27, 2007, the Commission's Chief Clerk issued notice of the hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the alleged violations.
24. Appearance at the preliminary hearing was waived by agreement of the ED and the Respondent.
25. The hearing was convened on February 13, 2008, by ALJ Penny A. Wilkov at the hearing facilities of the State Office of Administrative Hearings, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The ED was represented by TCEQ Litigation Division Attorney Alfred A. Oloko. Respondent was represented by legal counsel, Brian R. Smith. The Office of Public Counsel did not participate in the hearing. The record closed on March 7, 2008, after the filing of post-hearing briefs.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. §§ 5.013 and 7.002.
2. Respondent was notified of its alleged violations, the proposed penalties, and of the opportunity to request a hearing on the alleged violations, the penalties and the corrective actions, as required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104.
3. Respondent was notified of the hearing on the alleged violations and the proposed penalties, as required by TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TEX. ADMIN. CODE § 155.27, and 30 TEX. ADMIN. CODE §§ 39.25 and 80.6.
4. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
5. Respondent violated 30 TEXAS ADMIN. CODE §§ 116.115(b)(2)(E)(i), (ii), and (c) and TEXAS HEALTH & SAFETY CODE § 382.085(b) by failing to have a copy of Air Permit No. 54229L001 and production records for the rock crusher on site and to submit any requested records for the rock crusher when requested.
6. Respondent violated 30 TEXAS ADMIN. CODE § 116.115(c) and TEXAS HEALTH & SAFETY CODE § 382.0518(a) by failing to have water spray bars on all transfer points.

7. Respondent violated TEXAS HEALTH & SAFETY CODE § 382.085(b) and 30 TEXAS ADMIN. CODE § 116.115(c) by failing to comply with the opacity requirements as defined in Permit Number 54119L002 Special Condition No. 5.
8. Respondent violated TEXAS HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b) and 30 TEXAS ADMIN. CODE § 116.110(a) by failing to amend its general permit to include a cone rock crusher and power screening plants as additional sources of emissions.
9. Based on the above Findings of Fact and Conclusions of Law, an administrative penalty of \$13,800.00 is a reasonable exercise of the Commission's authority under TEX. WATER CODE ANN. § 7.051 and takes into account all factors set out in TEX. WATER CODE ANN. § 7.053.
10. Based on the above Findings of Facts and Conclusions of Law, the Commission should assess Respondent an administrative penalty of \$13,800.00.
11. Based on the above Findings of Facts and Conclusions of Law, the corrective actions specified below are a reasonable exercise of the Commission's authority under TEX. WATER CODE ANN. § 7.073.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. Within 30 days after the effective date of this Order, Respondent shall pay an administrative penalty in the amount of \$13, 800.00 for violations of 30 TEXAS ADMIN. CODE §§ 116.115(b)(2)(E)(i), (ii), and (c); TEXAS HEALTH & SAFETY CODE §382.085(b),

30 TEXAS ADMIN. CODE § 116.115(c), TEXAS HEALTH & SAFETY CODE § 382.0518(a), TEXAS HEALTH & SAFETY CODE § 382.085(b), 30 TEXAS ADMIN. CODE § 116.115(c), TEXAS HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), and 30 TEXAS ADMIN. CODE § 116.110(a). Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Advantage Asphalt Products, Ltd., Docket No. 2006-1434-AIR-E”:

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

2. Immediately upon the effective date this Order, Respondent shall begin maintaining a copy of the appropriate permits and production records at the Plant.
3. Within 30 days after the effective date of this Order, Respondent shall:
 - a. submit a request to amend permit No. 54119L002 to include both the unpermitted cone rock crusher and the power screening plants, or cease operation until such time as the appropriate authorization is obtained, in accordance with 30 TEXAS ADMIN. CODE § 116.110(a) to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. submit all records requested during the June 30, 2006 investigation, provide additional personnel training, and implement improvements to reporting procedures in order to timely submit complete and accurate records when requested;
 - c. respond completely and adequately, as determined by the ED, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
 - d. implement improvements to design, operation, or maintenance procedures, in order to address the opacity events that were documented on November 16, 2005, and to prevent the reoccurrence of same or similar incidents; and
 - e. install spray bars on all transfer points.
4. Within 180 days after the effective date of the Commission Order, Respondent shall:
- a. submit written certification that either authorization to construct and operate a source of air emissions has been obtained or that construction or operation has ceased until such time that appropriate authorization is obtained.
 - b. The certifications required by this Order 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 fine and imprisonment for knowing violations.”

Respondent shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

Manager, Air Section
Texas Commission on Environmental Quality
Amarillo Regional Office
3918 Canyon Drive
Amarillo, Texas 79109-4933

5. The imposition of this administrative penalty and Respondent’s compliance with all the terms and conditions set forth in this Order resolve only the violations that are the subject of this Order. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations that are not raised here.
6. The ED may refer this matter to the Office of the Texas Attorney General for further enforcement proceedings without notice to Respondent if the ED determines Respondent has not complied with one or more of the terms or conditions of this Order.
7. The Chief Clerk shall provide a copy of this Order to all of the parties.

8. The effective date of this Order is the date the order is final, as provided by TEX. GOV'T. CODE ANN § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.
9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.
10. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied for lack of merit.

Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman
For the Commission