

March 26, 2008

Les Trobman  
General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

**VIA FACSIMILE 512/239-5533**

**Re: SOAH Docket No. 582-08-0523; TCEQ Docket No. 2007-0768-AIR-E; In Re: In the Matter of an Enforcement Action against Advantage Asphalt Products, Ltd.; RN104955497**

Dear Mr. Trobman:

The Administrative Law Judge (ALJ) has reviewed the Exceptions to the Administrative Law Judge's Proposal for Decision (PFD) and Order ( Exceptions) filed by Advantage Asphalt Products, Ltd. (Respondent), and the Executive Director's (ED) response to those Exceptions. The ALJ agrees with the ED's response to the Exceptions. The Respondent's Exceptions are an attempt to re-urge the motion to vacate the judgment filed by Respondent, and to circumvent the ALJ's Order No. 1 denying Respondent's request to vacate the judgment on the basis of lack of jurisdiction and the untimely filing of the request.

According to 1 TEX. ADMIN. CODE (TAC) § 155.59, Respondent's Exceptions are an improper utilization of exceptions, which are intended to suggest amendments to the PFD and to correct clerical errors. Nowhere does 1 TAC § 155.59 grant the authority to vacate the PFD once issued, and in addition, this issue has been previously addressed by the ALJ. As stated in Order No. 1, the ALJ does not have authority to set aside the judgment after the PFD has been issued.

With the previous changes made by the ED, the ALJ believes the Proposal for Decision and Order, without further changes, correctly and equitably apply the applicable statutes and promulgated rules to the facts set forth in the evidentiary record.

Sincerely,

Stephen J. Pacey  
Administrative Law Judge

SJP/ed  
xc: Service List