

**Executive Summary – Enforcement Matter – Case No. 63336**  
**COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN**  
**EQUIPMENT COMPANY, LTD.**  
**RN102380250**  
**Docket No. 2023-0329-MLM-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MLM – EAQ, PST

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

COLORADO MATERIALS HUNTER PLANT 2, 5080 Farm-to-Market Road 2439, New Braunfels, Comal County

**Type of Operation:**

Aggregate production operation

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 23, 2024

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$7,625

**Amount Deferred for Expedited Settlement:** \$1,525

**Total Paid to General Revenue:** \$3,050

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Supplemental Environmental Project (“SEP”) Conditional Offset:** \$3,050

Name of SEP: The Guadalupe-Blanco River Trust (Third-Party Pre-Approved)

**Compliance History Classifications (CN600522452):**

Person/CN - High

Site/RN - High

**Compliance History Classifications (CN605315183):**

Person/CN - N/A

Site/RN - High

**Compliance History Classifications (CN602247983):**

Person/CN - High

Site/RN - Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** January 2021

**Executive Summary – Enforcement Matter – Case No. 63336**  
**COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN**  
**EQUIPMENT COMPANY, LTD.**  
**RN102380250**  
**Docket No. 2023-0329-MLM-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** February 17, 2022 to April 12, 2022

**Date(s) of NOE(s):** June 20, 2022

***Violation Information***

1. Failed to obtain approval of a modification to an approved Edwards Aquifer aboveground storage tank ("AST") System Facility Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone. Specifically, 29 ASTs were installed without prior approval. Additionally, a 10,000-gallon gasoline AST was installed instead of the three approved 4,000-gallon gasoline tanks and a 12,000-gallon multi-compartment oil tank was installed instead of the approved 12,000-gallon diesel tank [30 TEX. ADMIN. CODE § 213.4(a)(1)].

2. Failed to register an AST system. Specifically, a 20,000-gallon diesel tank in Containment B was not registered [30 TEX. ADMIN. CODE § 334.127].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondents implemented the following corrective measures:

- a. On April 19, 2022, registered the 20,000-gallon diesel tank; and
- b. By October 28, 2022, an Edwards Aquifer AST System Facility Plan was approved.

**Technical Requirements:**

The Order will require the Respondents to implement and complete a SEP (see SEP Attachment A).

**Executive Summary – Enforcement Matter – Case No. 63336  
COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN  
EQUIPMENT COMPANY, LTD.  
RN102380250  
Docket No. 2023-0329-MLM-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Mistie Gonzales, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3056; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

**SEP Third-Party Administrator:** The Guadalupe-Blanco River Trust, 933 East Court Street, Seguin, Texas 78155

**Respondent:** John R. Weisman, President, COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD., P.O. Box 2109, San Marcos, Texas 78667

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	27-Jun-2022			
	<b>PCW</b>	14-Nov-2022	<b>Screening</b>	2-Nov-2022	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD.
<b>Reg. Ent. Ref. No.</b>	RN102380250
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	63336	<b>No. of Violations</b>	2
<b>Docket No.</b>	2023-0329-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Mistie Gonzales
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$10,000
---	-------------------	----------

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	-10.0% Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	-\$1,000
---------------------------	-------------------	--------------------------------	----------

<b>Notes</b>	Reduction for High Performer Classification.
--------------	--

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

<b>Notes</b>	The Respondents do not meet the culpability criteria.
--------------	---

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	-\$1,375
--	-------------------	----------

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$893	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$28,200	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,625
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
--------------	--

<b>Final Penalty Amount</b>	\$7,625
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$7,625
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	20.0%	Reduction	<b>Adjustment</b>	-\$1,525
-----------------	-------	-----------	-------------------	----------

Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral offered for expedited settlement.
--------------	--

<b>PAYABLE PENALTY</b>	\$6,100
------------------------	---------

**Screening Date** 2-Nov-2022

**Docket No.** 2023-0329-MLM-E

**PCW**

**Respondent** COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and

**Case ID No.** 63336 WEISMAN EQUIPMENT COMPANY, LTD.

*Policy Revision 5 (January 28, 2021)*

*PCW Revision February 11, 2021*

**Reg. Ent. Reference No.** RN102380250

**Media** Edwards Aquifer

**Enf. Coordinator** Mistie Gonzales

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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 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%
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)

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

#### >> Compliance History Summary

**Compliance History Notes**

Reduction for High Performer Classification.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** -10%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** -10%

**Screening Date** 2-Nov-2022 **Docket No.** 2023-0329-MLM-E **PCW**  
**Respondent** COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD. *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 63336 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102380250  
**Media** Edwards Aquifer  
**Enf. Coordinator** Mistie Gonzales

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 213.4(a)(1)

**Violation Description** Failed to obtain approval of a modification to an approved Edwards Aquifer Aboveground Storage Tank ("AST") System Facility Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone. Specifically, 29 ASTs were installed without prior approval. Additionally, a 10,000-gallon gasoline AST was installed instead of three approved 4,000-gallon gasoline tanks and a 12,000-gallon multi-compartment oil tank was installed instead of the approved 12,000-gallon diesel tank.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>			<b>Percent</b> 0.0%	
	<b>Release</b>	Major	Moderate		Minor
	Actual				
	Potential				

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	<b>Percent</b> 10.0%
		x			

**Matrix Notes** 100% of the rule requirements were not met.

**Adjustment** \$22,500

\$2,500

**Violation Events**

Number of Violation Events 3 253 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$7,500

Three quarterly events are recommended from the initial investigation date (February 17, 2022) to the compliance date (October 28, 2022).

**Good Faith Efforts to Comply** 10.0% Reduction \$750

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		

**Notes** The Respondent achieved compliance on October 28, 2022.

**Violation Subtotal** \$6,750

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$866 **Violation Final Penalty Total** \$6,000

**This violation Final Assessed Penalty (adjusted for limits)** \$6,000

# Economic Benefit Worksheet

**Respondent** COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD.  
**Case ID No.** 63336  
**Reg. Ent. Reference No.** RN102380250  
**Media** Edwards Aquifer  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### 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	\$25,000	17-Feb-2022	28-Oct-2022	0.69	\$866	n/a	\$866
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated Permit cost to prepare, submit, and obtain approval of an Edwards Aquifer AST System Facility Plan. The Date Required is the initial investigation date, and the Final Date is the date of compliance.

### Avoided Costs

#### ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$25,000

**TOTAL**

\$866

<b>Screening Date</b>	2-Nov-2022	<b>Docket No.</b>	2023-0329-MLM-E	<b>PCW</b>
<b>Respondent</b>	COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD.			<i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>
<b>Case ID No.</b>	63336			
<b>Reg. Ent. Reference No.</b>	RN102380250			
<b>Media</b>	Edwards Aquifer			
<b>Enf. Coordinator</b>	Mistie Gonzales			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.127			
<b>Violation Description</b>	Failed to register an AST system. Specifically, a 20,000-gallon diesel tank in Containment B was not registered.			

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10.0%"/>
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirements were not met."/>				

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="X"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<input type="text"/>

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**



## Economic Benefit Worksheet

**Respondent**

COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD.

**Case ID No.**

63336

**Reg. Ent. Reference No.**

RN102380250

**Media**

Edwards Aquifer

**Violation No.**

2

Percent Interest	Years of Depreciation
5.0	15

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

**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)	\$3,200	17-Feb-2022	19-Apr-2022	0.17	\$27	n/a	\$27

**Notes for DELAYED costs**

Estimated Permit cost to register the 20,000-gallon AST. The Date Required is the initial investigation date, and the Final Date is the date of compliance.

**Avoided Costs**

**ANNUALIZE 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/Sam				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$3,200

**TOTAL**

\$27

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# Compliance History Report

Compliance History Report for CN600522452, RN102380250, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

**Customer, Respondent, or Owner/Operator:** CN600522452, COLORADO MATERIALS, LTD. **Classification:** HIGH **Rating:** 0.00

**Regulated Entity:** RN102380250, COLORADO MATERIALS HUNTER PLANT 2 **Classification:** HIGH **Rating:** 0.00

**Complexity Points:** 6 **Repeat Violator:** NO

**CH Group:** 04 - Mining

**Location:** 5080 Farm-to-Market Road 2439 in New Braunfels, Comal County, Texas

**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):**

**AGGREGATE PRODUCTION OPERATION REGISTRATION**  
AP0001938

**EDWARDS AQUIFER PERMIT** 13001601

**EDWARDS AQUIFER PERMIT** 13-13072901

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 51961

**EDWARDS AQUIFER PERMIT** 13-93120801

**STORMWATER PERMIT** TXR05U420

**Compliance History Period:** September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

**Date Compliance History Report Prepared:** March 16, 2023

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** March 16, 2018 to March 16, 2023

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

**Name:** Ellen Ojeda

**Phone:** (512) 239-2581

**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

**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 August 29, 2019 (1569234)

**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.

**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

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# Compliance History Report

Compliance History Report for CN605315183, RN102380250, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

**Customer, Respondent, or Owner/Operator:** CN605315183, FLYING "W" PROPERTIES, LTD. **Classification:** NOT APPLICABLE **Rating:** N/A

**Regulated Entity:** RN102380250, COLORADO MATERIALS HUNTER PLANT 2 **Classification:** HIGH **Rating:** 0.00

**Complexity Points:** 6 **Repeat Violator:** NO

**CH Group:** 04 - Mining

**Location:** 5080 Farm-to-Market Road 2439 in New Braunfels, Comal County, Texas

**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):**

**AGGREGATE PRODUCTION OPERATION REGISTRATION**  
AP0001938

**EDWARDS AQUIFER PERMIT** 13001601

**EDWARDS AQUIFER PERMIT** 13-13072901

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 51961

**EDWARDS AQUIFER PERMIT** 13-93120801

**STORMWATER PERMIT** TXR05U420

**Compliance History Period:** September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

**Date Compliance History Report Prepared:** March 02, 2023

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** March 02, 2018 to March 02, 2023

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

**Name:** Ellen Ojeda

**Phone:** (512) 239-2581

**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

**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 August 29, 2019 (1569234)

**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.

**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



# Compliance History Report

Compliance History Report for CN602247983, RN102380250, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

**Customer, Respondent, or Owner/Operator:** CN602247983, WEISMAN EQUIPMENT COMPANY, LTD. **Classification:** HIGH **Rating:** 0.00  
**Regulated Entity:** RN102380250, COLORADO MATERIALS HUNTER PLANT 2 **Classification:** UNCLASSIFIED **Rating:** -----  
**Complexity Points:** 9 **Repeat Violator:** NO  
**CH Group:** 04 - Mining  
**Location:** 5080 Farm-to-Market Road 2439 in New Braunfels, Comal County, Texas  
**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):**

**AGGREGATE PRODUCTION OPERATION REGISTRATION**  
AP0001938  
**EDWARDS AQUIFER PERMIT** 13001601  
**EDWARDS AQUIFER PERMIT** 13-13072901

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 51961  
**EDWARDS AQUIFER PERMIT** 13-93120801  
**STORMWATER PERMIT** TXR05U420

**Compliance History Period:** September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

**Date Compliance History Report Prepared:** March 16, 2023

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** March 16, 2018 to March 16, 2023

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

**Name:** Ellen Ojeda

**Phone:** (512) 239-2581

**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

**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 August 29, 2019 (1569234)

**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.

**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	§	
COLORADO MATERIALS, LTD.,	§	TEXAS COMMISSION ON
FLYING "W" PROPERTIES, LTD., AND	§	
WEISMAN EQUIPMENT COMPANY,	§	
LTD.	§	
RN102380250	§	ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2023-0329-MLM-E

### I. JURISDICTION AND STIPULATIONS

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD. (the "Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents together stipulate that:

1. The Respondents own and operate an aggregate production operation located at 5080 Farm-to-Market Road 2439 in New Braunfels, Comal County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5). The Facility contains an aboveground storage tank ("AST") system, which is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. The Executive Director and the Respondents agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondents are subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$7,625 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents paid \$3,050 of the penalty and \$1,525 of the penalty is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with the terms and conditions of this Order. If the Respondents' fail to timely and satisfactorily comply with any of the terms or



requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.

Pursuant to TEX. WATER CODE § 7.067, \$3,050 of the penalty shall be conditionally offset by the Respondents' timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the attached SEP Agreement ("Attachment A", incorporated herein by reference). The Respondents' obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director

5. The Executive Director and the Respondents 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). 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.
6. 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 Respondents have not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that the Respondents implemented the following corrective measures at the Facility:
  - a. On April 19, 2022, the Respondents registered the 20,000-gallon diesel tank; and
  - b. By October 28, 2022, an Edwards Aquifer AST System Facility Plan was approved.

## II. ALLEGATIONS

During an investigation at the Facility conducted on February 17, 2022, to April 12, 2022, an investigator documented that the Respondents:

1. Failed to obtain approval of a modification to an approved Edwards Aquifer AST System Facility Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1). Specifically, 29 ASTs were installed without prior approval. Additionally, a 10,000-gallon gasoline AST was installed instead of the three approved 4,000-gallon gasoline tanks and a 12,000-gallon multi-compartment oil tank was installed instead of the approved 12,000-gallon diesel tank.

2. Failed to register an AST system, in violation of 30 TEX. ADMIN. CODE § 334.127. Specifically, a 20,000-gallon diesel tank in Containment B was not registered.

### III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondents are assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondents' compliance with all of the requirements set forth in this 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. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD., Docket No. 2023-0329-MLM-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. The Respondents shall implement and complete an SEP as set forth in Section I, Paragraph No. 4. The amount of \$3,050 of the assessed penalty is conditionally offset based on the Respondents' implementation and completion of the SEP pursuant to the terms of the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. The Respondents are jointly and severally liable for the violations documented in this Order; and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Order.
4. All relief not expressly granted in this Order is denied.
5. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this 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.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

  
For the Executive Director

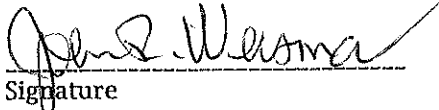
4/2/2024  
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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 OAG 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 OAG 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

1/16/2024  
Date

JOHN R. WEISMAN  
Name (Printed or typed)  
Authorized Representative of  
COLORADO MATERIALS, LTD.

PRESIDENT  
Title

If mailing address has changed, please check this box and provide the new address below:

**Instructions:** Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision I of this Order.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

  
For the Executive Director.

4/2/2024

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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 OAG 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 OAG 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

1/16/2024  
Date

JOHN R. WEISMAN  
Name (Printed or typed)  
Authorized Representative of  
FLYING "W" PROPERTIES, LTD.

PRESIDENT  
Title

If mailing address has changed, please check this box and provide the new address below:

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

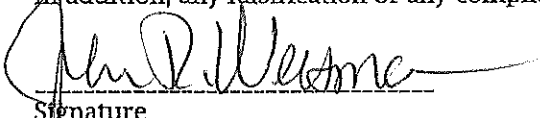
For the Commission \_\_\_\_\_ Date \_\_\_\_\_  
 \_\_\_\_\_  
For the Executive Director \_\_\_\_\_ Date 4/2/2024

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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 OAG 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 OAG 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.

 \_\_\_\_\_ Date 1/16/2024  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
JOHN R. WEISMAN \_\_\_\_\_ Title PRESIDENT  
Name (Printed or typed) \_\_\_\_\_ Title \_\_\_\_\_  
Authorized Representative of  
WEISMAN EQUIPMENT COMPANY, LTD.

If mailing address has changed, please check this box and provide the new address below:

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

Attachment A

Docket Number: 2023-0329-EAQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD.
Payable Penalty Amount:	\$6,100
SEP Offset Amount:	\$3,050
Type of SEP:	Contribution to a Third-Party Pre-Approved SEP
Third-Party Administrator:	The Guadalupe-Blanco River Trust
Project Name:	<i>Shorebird and Waterfowl Habitat Conservation and Restoration Project</i>
<b>Location of SEP:</b> Aransas, Atascosa, Bandera, Bastrop, Bee, Bexar, Blanco, Caldwell, Calhoun, Comal, DeWitt, Fayette, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Jackson, Karnes, Kendall, Kerr, Lavaca, Live Oak, Medina, Nueces, Real, Refugio, San Patricio, Travis, Victoria, and Wilson Counties	

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to **The Guadalupe-Blanco River Trust** for the *Shorebird and Waterfowl Habitat Conservation and Restoration Project*. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to conduct due diligence, purchase conservation easements from private landowners, conduct restoration activities, and provide property stewardship.

After a property has been identified for conservation easement acquisition, the Third-Party Administrator shall submit a proposal to TCEQ that includes property owner information, metes and bounds, purchase price, amount of SEP Offset Amount to be used for due diligence and purchase, deed encumbrance language, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, the Third-Party Administrator may use the SEP Offset Amount for approved due diligence activities and purchase of the conservation easement. The Third-Party Administrator shall address and remedy all encumbrances to the property title, including mortgages and other liens, prior to closing on the conservation easement purchase. The Third-Party Administrator shall not sell conservation easements or any other land interests acquired with the SEP Offset Amount. The Third-Party Administrator shall record a copy of each conservation easement in the county deed records within 15 days of closing. After a conservation easement is acquired, the Third-Party Administrator shall use the SEP Offset Amount for property stewardship to ensure that the terms of the easement are followed.

COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD.  
Docket No. 2023-0329-EAQ-E  
Agreed Order - Attachment A

Property stewardship activities include monitoring the property, compliance enforcement, and providing continual resources to the property owner. The SEP Offset Amount shall not be used for any legal fees associated with property stewardship. The Third-Party Administrator certifies that the conservation easements purchased for this Project will not be part of a mitigation project.

The Third-Party Administrator shall also use the SEP Offset Amount for habitat restoration and enhancement, including planting native species, removal of invasive species, and grading. Restoration activities will be conducted by a contractor and will take place on public land managed by entities such as the Texas Parks and Wildlife Department and U.S. Fish and Wildlife Services or private property protected by a conservation easement. Restoration activities will take place on former wetlands with effectively drained hydric soil map units, filled areas with no development, impounded areas, excavated areas, or farmed wetlands as well as degraded wetlands that are partially drained, impounded, excavated, farmed, or contain tidal restrictions. Prior to starting restoration activities, the Third-Party Administrator shall submit a proposal to TCEQ that includes the exact property location and description, property owner information, specific restoration activities to be conducted, amount of the SEP Offset Amount to be used for restoration activities, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, the Third-Party Administrator may use the SEP Offset Amount for the approved restoration activities. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that the Respondent has no prior commitment to make this contribution and that it is being contributed solely to settle this enforcement action. The Respondent shall not profit from this SEP.

b. Environmental Benefit

This Project is needed because important wildlife habitats for wetland-dependent and other species are under threat from an expanding human footprint into previously undeveloped areas. Conserving properties through conservation easements will ensure that those lands are permanently protected from environmentally harmful activities and use. Restoring habitats through native plantings, removal of invasive species, and grading will protect water quality and provide habitat for native birds and other aquatic and coastal species, such as the whooping crane, piping plover, reddish egret, sooty tern, white-faced ibis, white-tailed hawk, black-spotted newt, sheet frog, and northern Aplomado falcon. Potential property acquisition areas have been identified and prioritized as the highest quality habitat based on data derived from the U.S. Fish and Wildlife Service with input from Texas Parks and Wildlife Department, Ducks Unlimited, Gulf Coast Bird Observatory, and the International Crane Foundation. Protection of these strategic sites will also protect and improve both water quality and quantity through increased filtration into groundwater sources and increased filtration of pollutants. Potential restoration activity areas have been identified and prioritized based on maps of historic wetlands from the National Wetland Inventory and local wetland maps that have been detailed by U.S. Fish and Wildlife Services through the Coastal Prairie Conservation Initiative.



COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD.  
Docket No. 2023-0329-EAQ-E  
Agreed Order - Attachment A

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **The Guadalupe-Blanco River Trust SEP** and shall mail the contribution with a copy of the Agreed Order to:

The Guadalupe-Blanco River Trust SEP  
Attention: Executive Director  
933 East Court Street  
Seguin, Texas 78155

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

COLORADO MATERIALS, LTD., FLYING "W" PROPERTIES, LTD., and WEISMAN EQUIPMENT COMPANY, LTD.  
Docket No. 2023-0329-EAQ-E  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

**6. Recognition**

The Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.