

Executive Summary – Enforcement Matter – Case No. 65570

ATX Liberty Concrete LLC

RN110840485

Docket No. 2024-0364-EAQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

ATX Liberty Concrete, 9900 North Highway 183, Florence, Williamson County

Type of Operation:

Concrete batch plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: November 1, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,500

Amount Deferred for Expedited Settlement: \$2,700

Total Paid to General Revenue: \$5,400

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project (“SEP”) Conditional Offset: \$1,701

Name of SEP: Brazoria County (Third-Party Pre-Approved)

SEP Conditional Offset: \$3,699

Name of SEP: Texas Water Development Board (Third-Party Pre-Approved)

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Executive Summary – Enforcement Matter – Case No. 65570
ATX Liberty Concrete LLC
RN110840485
Docket No. 2024-0364-EAQ-E

Investigation Information

Complaint Date(s): November 18, 2023

Complaint Information: Alleged that a concrete driveway on the ATX property changed the natural flow of stormwater causing stormwater runoff discharge onto neighboring property.

Date(s) of Investigation: December 15, 2023

Date(s) of NOE(s): February 13, 2024

Violation Information

Failed to obtain approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to commencing regulated activity over the Edwards Aquifer Contributing Zone. Specifically, approximately 5.7 acres of the Site were disturbed to construct and operate a concrete batch plant without prior approval of a CZP or exception request [30 TEX. ADMIN. CODE § 213.23(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. The Order will require the Respondents to implement and complete two SEPs (see SEP Attachments).
2. The Order will also require the Respondent to:
 - a. Immediately cease any regulated activity at the Site until such time that an Edwards Aquifer CZP has been reviewed and approved by the TCEQ Austin Regional Office;
 - b. Within 30 days, submit an Edwards Aquifer CZP application and associated application fees;
 - c. Within 45 days, submit written certification of compliance with b.; and
 - d. Within 120 days, submit written certification that approval of the Edwards Aquifer CZP has been obtained.

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Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Nancy Sims, Enforcement Division, Enforcement Team 1, MC R-12, (512) 239-5053; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

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

SEP Third-Party Administrator: Brazoria County, 111 East Locust, Building A-29, Suite 270, Angleton, Texas 77515

SEP Third-Party Administrator: Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231

Respondent: Bryon K. Piper, Manager, ATX Liberty Concrete LLC, 2705 Cheney Cove, Austin, Texas 78745

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 21-Feb-2024 | Screening | 22-Feb-2024 | EPA Due | |
| | PCW | 19-Jun-2024 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | | | |
|-----------------------------|--------------------------|---------------------------|-------|--|--|
| Respondent | ATX Liberty Concrete LLC | | | | |
| Reg. Ent. Ref. No. | RN110840485 | | | | |
| Facility/Site Region | 11-Austin | Major/Minor Source | Major | | |

CASE INFORMATION

| | | | |
|--|-----------------|------------------------------|--------------------|
| Enf./Case ID No. | 65570 | No. of Violations | 1 |
| Docket No. | 2024-0364-EAQ-E | Order Type | 1660 |
| Media Program(s) | Edwards Aquifer | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Nancy Sims |
| | | EC's Team | Enforcement Team 1 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$25,000 |

Penalty Calculation Section

| | | |
|---|-------------------|----------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$15,000 |
|---|-------------------|----------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | | |
|---------------------------|--------|-------------------|--------------------------------|----------|
| Compliance History | -10.0% | Adjustment | Subtotals 2, 3, & 7 | -\$1,500 |
|---------------------------|--------|-------------------|--------------------------------|----------|

| | | | | |
|--------------|--|--|--|--|
| Notes | Reduction for High Performer Classification. | | | |
|--------------|--|--|--|--|

| | | | | | |
|--------------------|----|------|--------------------|-------------------|-----|
| 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 |
|--|-------------------|-----|

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

| | | |
|------------------------------|----------|-----------------------------------|
| Total EB Amounts | \$1,223 | *Capped at the Total EB \$ Amount |
| Estimated Cost of Compliance | \$32,000 | |

| | | |
|-----------------------------|-----------------------|----------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$13,500 |
|-----------------------------|-----------------------|----------|

| | | | |
|---|------|-------------------|-----|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0.0% | Adjustment | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

| | | | |
|--------------|-----------------------------|----------|--|
| Notes | | | |
| | Final Penalty Amount | \$13,500 | |

| | | |
|-----------------------------------|-------------------------------|----------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$13,500 |
|-----------------------------------|-------------------------------|----------|

| | | | | |
|-----------------|-------|------------------|-------------------|----------|
| DEFERRAL | 20.0% | Reduction | Adjustment | -\$2,700 |
|-----------------|-------|------------------|-------------------|----------|

Reduces the Final Assessed Penalty by the indicated percentage.

| | | | |
|--------------|--|--|--|
| Notes | Deferral offered for expedited settlement. | | |
|--------------|--|--|--|

| | |
|------------------------|----------|
| PAYABLE PENALTY | \$10,800 |
|------------------------|----------|

| | | | | |
|--------------------------------|--------------------------|-------------------|-----------------|---|
| Screening Date | 22-Feb-2024 | Docket No. | 2024-0364-EAQ-E | PCW |
| Respondent | ATX Liberty Concrete LLC | | | <i>Policy Revision 5 (January 28, 2021)</i> |
| Case ID No. | 65570 | | | <i>PCW Revision February 11, 2021</i> |
| Reg. Ent. Reference No. | RN110840485 | | | |
| Media | Edwards Aquifer | | | |
| Enf. Coordinator | Nancy Sims | | | |

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 22-Feb-2024 | | Docket No. 2024-0364-EAQ-E | | PCW | |
| Respondent ATX Liberty Concrete LLC | | Policy Revision 5 (January 28, 2021) | | | |
| Case ID No. 65570 | | PCW Revision February 11, 2021 | | | |
| Reg. Ent. Reference No. RN110840485 | | | | | |
| Media Edwards Aquifer | | | | | |
| Enf. Coordinator Nancy Sims | | | | | |
| Violation Number 1 | | | | | |
| Rule Cite(s) | | 30 Tex. Admin. Code § 213.23(a)(1) | | | |
| Violation Description | | Failed to obtain approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to commencing regulated activity over the Edwards Aquifer Contributing Zone. Specifically, approximately 5.7 acres of the Site were disturbed to construct and operate a concrete batch plant without prior approval of a CZP or exception request. | | | |
| Base Penalty | | | | \$25,000 | |
| >> Environmental, Property and Human Health Matrix | | | | | |
| OR | Release | | Harm | | |
| | Major | Moderate | Minor | | |
| | Actual | | | | |
| | Potential | | | | Percent 0.0% |
| >>Programmatic Matrix | | | | | |
| | Falsification | Major | Moderate | Minor | |
| | | X | | | Percent 20.0% |
| Matrix Notes | | 100% of the rule requirements were not met. | | | |
| Adjustment | | | | \$20,000 | |
| | | | | \$5,000 | |
| >> Violation Events | | | | | |
| Number of Violation Events | | 3 | | 69 Number of violation days | |
| | daily | | | | |
| | weekly | | | | |
| | monthly | X | | | |
| | quarterly | | | | |
| | semiannual | | | | |
| | annual | | | | |
| | single event | | | | |
| Violation Base Penalty | | | | \$15,000 | |
| Three monthly events are recommended from the investigation date (December 15, 2023) to the screening date (February 22, 2024). | | | | | |
| Good Faith Efforts to Comply | | 0.0% | | Reduction \$0 | |
| | | Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer | | | |
| | Extraordinary | | | | |
| | Ordinary | | | | |
| | N/A | X | | | |
| Notes | | The Respondent does not meet the good faith criteria for this violation. | | | |
| Violation Subtotal | | | | \$15,000 | |
| >> Economic Benefit (EB) for this violation | | | | | |
| >> Statutory Limit Test | | | | | |
| Estimated EB Amount | | \$1,223 | | Violation Final Penalty Total \$13,500 | |
| This violation Final Assessed Penalty (adjusted for limits) | | | | \$13,500 | |

Economic Benefit Worksheet

Respondent ATX Liberty Concrete LLC
Case ID No. 65570
Reg. Ent. Reference No. RN110840485
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 | \$5,000 | 15-Dec-2023 | 19-Sep-2024 | 0.76 | \$191 | n/a | \$191 |
| Other (as needed) | \$27,000 | 15-Dec-2023 | 19-Sep-2024 | 0.76 | \$1,032 | n/a | \$1,032 |

Notes for DELAYED costs

Estimated Permit Costs to submit an Edwards Aquifer CZP application and obtain approval. Date Required is the date of the investigation, and Final Date is the estimated date of compliance.

Estimated Other cost to prepare an Edwards Aquifer CZP application. Date Required is the date of the investigation, and Final Date is the estimated 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

\$32,000

TOTAL

\$1,223



Compliance History Report

Compliance History Report for CN605577493, RN110840485, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN605577493, ATX Liberty Concrete LLC
Classification: HIGH **Rating:** 0.00

Regulated Entity: RN110840485, ATX LIBERTY CONCRETE
Classification: HIGH **Rating:** 0.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 10 - Cement and Concrete Product Manufacturing

Location: 9900 North Highway 183, Florence, Williamson County, Texas

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 90864
WASTEWATER PERMIT TXG112538
EDWARDS AQUIFER PERMIT 11004013

Compliance History Period: September 01, 2018 to August 31, 2023 **Rating Year:** 2023 **Rating Date:** 09/01/2023

Date Compliance History Report Prepared: May 28, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 28, 2019 to May 28, 2024

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Nancy Sims **Phone:** (512) 239-5053

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five-year compliance period? NO
- 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 | November 30, 2019 | (1616330) | Item 14 | January 06, 2021 | (1721569) |
| Item 2 | December 16, 2019 | (1629451) | Item 15 | February 15, 2021 | (1734600) |
| Item 3 | January 28, 2020 | (1637099) | Item 16 | March 10, 2021 | (1734601) |
| Item 4 | March 18, 2020 | (1650277) | Item 17 | April 09, 2021 | (1734602) |
| Item 5 | April 08, 2020 | (1656629) | Item 18 | May 13, 2021 | (1744623) |
| Item 6 | May 11, 2020 | (1663107) | Item 19 | June 19, 2021 | (1749097) |
| Item 7 | June 17, 2020 | (1669675) | Item 20 | July 14, 2021 | (1754710) |
| Item 8 | July 10, 2020 | (1676671) | Item 21 | August 06, 2021 | (1760015) |
| Item 9 | August 11, 2020 | (1683418) | Item 22 | September 14, 2021 | (1769729) |
| Item 10 | September 15, 2020 | (1689994) | Item 23 | October 14, 2021 | (1780673) |
| Item 11 | October 14, 2020 | (1696301) | Item 24 | November 08, 2021 | (1786918) |
| Item 12 | November 12, 2020 | (1721567) | Item 25 | December 13, 2021 | (1793684) |
| Item 13 | December 15, 2020 | (1721568) | Item 26 | January 14, 2022 | (1801514) |

| | | | | | |
|---------|--------------------|-----------|---------|--------------------|-----------|
| Item 27 | February 11, 2022 | (1809389) | Item 40 | March 01, 2023 | (1901553) |
| Item 28 | March 09, 2022 | (1816531) | Item 41 | April 03, 2023 | (1908334) |
| Item 29 | April 18, 2022 | (1822982) | Item 42 | May 01, 2023 | (1915466) |
| Item 30 | May 02, 2022 | (1831815) | Item 43 | June 01, 2023 | (1922114) |
| Item 31 | June 02, 2022 | (1838188) | Item 44 | July 06, 2023 | (1929077) |
| Item 32 | July 05, 2022 | (1845272) | Item 45 | August 18, 2023 | (1935949) |
| Item 33 | August 01, 2022 | (1851810) | Item 46 | September 05, 2023 | (1942184) |
| Item 34 | September 08, 2022 | (1859229) | Item 47 | October 06, 2023 | (1948950) |
| Item 35 | October 03, 2022 | (1865567) | Item 48 | November 16, 2023 | (1954624) |
| Item 36 | November 01, 2022 | (1872457) | Item 49 | December 07, 2023 | (1964426) |
| Item 37 | December 05, 2022 | (1878335) | Item 50 | January 11, 2024 | (1971037) |
| Item 38 | January 03, 2023 | (1885233) | Item 51 | February 16, 2024 | (1980042) |
| Item 39 | February 06, 2023 | (1892966) | Item 52 | March 14, 2024 | (1986565) |

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
ENFORCEMENT ACTION
CONCERNING
ATX LIBERTY CONCRETE LLC
RN110840485

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2024-0364-EAQ-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 ATX Liberty Concrete LLC (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a concrete batch plant located at 9900 North Highway 183 in Florence, Williamson County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent 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 Respondent is 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$13,500 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$5,400 of the penalty and \$2,700 of the penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms and conditions 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, \$5,400 of the penalty shall be conditionally offset by the Respondent's timely and satisfactory completion of Supplemental Environmental Projects ("SEPs") as defined in the attached SEP Agreements ("Attachment A" and "Attachment B", incorporated herein by reference). The Respondent's 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 Agreements, as determined by the Executive Director.

5. 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). 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 Respondent has 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.

II. ALLEGATIONS

During an investigation at the Site conducted on December 15, 2023, an investigator documented that the Respondent failed to obtain approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to commencing regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.23(a)(1). Specifically, approximately 5.7 acres of the Site were disturbed to construct and operate a concrete batch plant without prior approval of a CZP or exception request.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's 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: ATX Liberty Concrete LLC, Docket No. 2024-0364-EAQ-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 Respondent shall implement and complete the SEPs as set forth in Section I, Paragraph No. 4. The amount of \$5,400 of the assessed penalty is conditionally offset based on the Respondent's implementation and completion of the SEPs pursuant to the terms of the SEP Agreements, as defined in Attachment A and Attachment B. Penalty payments for any portion of the SEPs deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. The Respondent shall undertake the following technical requirements:

- a. Immediately cease any regulated activity at the Site until such time that an Edwards Aquifer CZP has been reviewed and approved by the TCEQ Austin Regional Office.
- b. Within 30 days after the effective date of this Order submit an Edwards Aquifer CZP application and associated application fees through the TCEQ File Transfer Protocol Secure website to EAdmin@tceq.texas.gov.

Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing.

- c. Within 45 days after the effective date of this Order, submit written certification of compliance with Ordering Provision No. 3.b, in accordance with Ordering Provision No. 3.e below.
- d. Within 120 days after the effective date of this Order, submit written certification that approval of the Edwards Aquifer CZP has been obtained, in accordance with Ordering Provision No. 3.e below.
- e. Submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.c and 3.d. The certification shall be signed by the Respondent and shall 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:

Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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 Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site 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 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. Extension requests shall be sent to the Enforcement Division at the address listed above.
7. This 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 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

11/20/2024

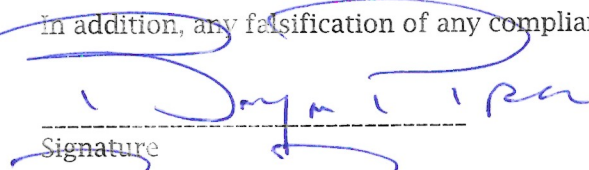
Date

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

09/24/24

Date

Bryan Ripen

Name (Printed or typed)
Authorized Representative of
ATX Liberty Concrete LLC

Manager

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.

Attachment A
Docket Number: 2024-0364-EAQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|-----------------------------------|--|
| Respondent: | ATX Liberty Concrete LLC |
| Payable Penalty Amount: | \$10,800 |
| SEP Offset Amount: | \$1,701 |
| Type of SEP: | Contribution to a Third-Party Administrator SEP |
| Third-Party Administrator: | Brazoria County |
| Project Name: | <i>On-Site Wastewater Facilities Assistance</i> |
| Location of SEP: | Brazoria County |

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 **Brazoria County** for the *On-Site Wastewater Facilities Assistance* Project. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to provide assistance to low-income homeowners in replacing their malfunctioning or failing onsite wastewater treatment systems in Brazoria County. The Third-Party Administrator shall identify property owners for potential replacement of their malfunctioning wastewater treatment system. Each candidate shall complete an application, including standard income documentation, to determine their eligibility. The Third-Party Administrator shall review applications for eligibility for assistance at the Third-Party Administrator's expense.

After a candidate's low-income income status is verified, the Third-Party Administrator shall seek bids from local onsite wastewater treatment system installers to design and install an appropriate onsite wastewater treatment system for the particular property and soil conditions. The Third-Party Administrator shall determine which kind of system is appropriate for installation at each qualified site based on factors including the size of the property and the soil composition. The Third-Party Administrator shall also determine whether a system should be repaired rather than replaced.

The Third-Party Administrator shall select a qualified bidder for the installation. The installer shall submit an application including all standard wastewater treatment system installation requirements that shall be reviewed by the Third-Party Administrator. Upon approval of the application, the system shall be installed by the selected contract company. After the system installation is completed by the contract company and approved by The Third-Party Administrator, payment shall be made by the Third-Party Administrator to the selected company using the SEP Offset Amount.

The Third-Party Administrator shall ensure that all repairs, replacements, and installations are performed in compliance with local, state, and federal rules relating to onsite wastewater treatment systems. The Third-Party Administrator shall ensure that only properly licensed contractors are utilized for repair of existing onsite wastewater treatment systems and installation of new onsite wastewater treatment systems. 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 able to be 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 SEP will provide a benefit to the environment by preventing the release of sewage into the environment and by protecting human health. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). People can be exposed through sewage in drinking water sources, direct contact from water in lawns or streets, and inhalation and skin absorption.

Sewage overflows also cause damage to the environment. Sewage overflows may reach rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause algae blooms, and kill fish and other organisms in aquatic habitats.

Each failing septic system that is replaced will improve the water quality in waterways and watersheds by removing raw sewage and high levels of bacteria, viruses, and protozoa. Removal of sewage as a point source of pollution will also protect ground, surface, and drinking water from contamination. This Project has the potential to not only improve the water quality in the Brazos River Basin, Christmas Bay, Galveston Bayou, Chocolate Bayou, Bastrop Bayou, and the San Bernard River Basin, but will also improve the public health for a sector of the population that is least able to afford health care. Diseases that result from sewage contaminated water range from mild gastroenteritis (causing stomach cramps and diarrhea) to life threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

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 **Brazoria County SEP** and shall mail the contribution with a copy of the Agreed Order to:

Director
Brazoria County
111 East Locust, Building A-29, Suite 270
Angleton, Texas 77515

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:

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.

Attachment B
Docket Number: 2024-0364-EAQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|-----------------------------------|---|
| Respondent: | ATX Liberty Concrete LLC |
| Payable Penalty Amount: | \$10,800 |
| SEP Offset Amount: | \$3,699 |
| Type of SEP: | Contribution to a Third-Party Administrator SEP |
| Third-Party Administrator: | Texas Water Development Board |
| Project Name: | <i>Water-Level Recorder Data in Every Texas County</i> |
| Total Project Budget: | \$997,500 |
| Location of SEP: | Statewide; preference for Williamson County |

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative payable 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 B.

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 **Texas Water Development Board** for the *Water-Level Recorder Data in Every Texas County* project (the “Project”). The Project is to purchase, install, and maintain automatic water-level recorders in unused wells in the remaining one hundred sixty-six (166) counties. The Third-Party Administrator shall give preference to installing water-level recorders initially in counties in which there are 1) no existing automatic water-level recorder wells, 2) no groundwater conservation district, or 3) groundwater conservation districts that do not have the staff and/or the financial ability to install an automatic water-level recorder. The Project will be done in accordance with all federal, state, and local environmental laws and regulations. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ.

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

The groundwater stored within Texas’ minor and major aquifers is an important natural resource that is relied upon to meet the water supply demands of Texans across the state. Many factors affect the availability of this resource including drought and increased demand. This Project will provide statewide comprehensive real-time groundwater level data to Texas counties, cities, groundwater conservation districts, water supply companies, and individual well owners.

The availability of this comprehensive data will promote awareness of the effects of drought on Texas' aquifers and assist in groundwater management planning and use throughout the state.

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 **Texas Water Development Board SEP** and shall mail the contribution with a copy of the Agreed Order to:

Texas Water Development Board
Attention: Finance
P.O. Box 13231
Austin, Texas 78711-3231

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 B, 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:

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 B 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.