

Environmental Management System (EMS)

TxDOT will be piloting an Environmental Management System (EMS) for road construction projects. In order to satisfy an agreement with the U.S. Environmental Protection Agency (EPA), this system must be fully in place statewide by 2013.

The EMS will formally integrate environmental compliance into road construction projects from start to finish. The system will constantly be evaluated and improved. TxDOT's Assistant Executive Director for Engineering Operations serves as the project director for the EMS pilot phase.

The Consent Agreement and Final Order (CAFO) between the EPA and TxDOT became effective on May 24, 2007, including a Supplemental Environmental Project for TxDOT to develop the EMS. The next milestone TxDOT faces is approval from the EPA for its "Pilot Phase EMS Implementation Plan."

To date, TxDOT has submitted three items to the EPA to satisfy the Order:

- In June 2007, TxDOT identified the members of its EMS development team and submitted a schedule of milestones to be met in order to have the EMS fully in place statewide by July 2013.
- In September 2007, TxDOT submitted a gap analysis - a study that gauged the state of TxDOT's current environmental management practices to identify what EPA requirements for the EMS are now missing.
- In June 2008, TxDOT submitted its "Pilot Phase EMS Implementation Plan" to the EPA.

The "Pilot Phase EMS Implementation Plan" describes in detail how the new EMS process will work and how it will be integrated into road construction operations, evaluated and improved. The pilot EMS plan builds on the gap analysis that was conducted in three pilot districts (Dallas, Yoakum and Waco) and four divisions (ENV, Design, Maintenance and Construction). Construction contractors were also surveyed as part of the study. Each pilot District has selected projects throughout the stages of development and delivery to try out the proposed process.

Also, the plan includes a schedule for pilot phase implementation and an explanation of how three Storm Water Objective Projects – one in each of the three pilot districts – will be included. These projects will have special provisions addressing the EPA requirements for managing storm water during construction.

ENV is working on a new training plan, including an EMS Awareness training video for contractors, to be given at the pilot construction projects. The Statewide EMS Implementation Plan is due to the EPA in August 2010, and the EMS will become a permanent part of TxDOT's operating procedures statewide.

Details of the Pilot Phase EMS will be presented at TxDOT's Environmental Coordinators Conference in September 2008 and later at other TxDOT conferences.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

APR 24 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (7099 3220 0001 4432 7502)

Ms. Mary Perez, Director
Natural Resources Management Section
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, TX 78701-2483

Re: Class 2 - Consent Agreement and Final Order
Docket Number CWA-06-2006 2101
NPDES Permit Numbers TXR10PS82, TXR10PH24, TXR10TL70, TXR15N539,
TXR15A042, and TXR152549

Dear Ms. Perez:

Enclosed is a copy of the "Consent Agreement and Final Order" issued in the above-referenced matter. The CAFO shall become effective 30 days after the date of issuance. Penalty payment is due on the effective date of the Order.

If you have any questions regarding this matter, please contact Mr. Everett H. Spencer, of my staff, at (214) 665-8060.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins
Director
Compliance Assurance and
Enforcement Division

cc: Mr. Bryan Sinclair, Manager
Enforcement Section I
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

3. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged in the Complaint.

4. The Respondent admits the jurisdictional allegations of the Complaint; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or the Findings of Fact and Conclusions of Law contained in this CAFO.

5. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the Complaint and this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below and consents to the performance of the Supplemental Environmental Project (SEP) set forth below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The Texas Department of Transportation ("Respondent") is a state agency of the State of Texas, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. Respondent owned or operated multiple construction sites operating under National Pollutant Discharge Elimination System (NPDES) permit numbers TXR10PS82, TXR10PH24,

TXR10TL70, TXR15N539, TXR15A042 and TXR152549 (herein "the facility" or "facilities") and the operation of which was the subject of the Complaint.

9. The Complaint specified findings of fact and conclusions of law that are hereby incorporated by reference and alleged, among other things, that at the relevant times: Respondent was a "person" that "owned or operated" a facility that was a "point source" subject to a "discharge" of "pollutants" to identified "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facilities were subject to the provisions of the Act, 33 U.S.C. § 1251 *et seq.*, and the NPDES program; and Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, by discharging pollutants to waters of the United States without permit authorization, and by violating permit conditions, as specified in the Complaint.

10. With the issuance of the Complaint, the State of Texas was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

11. EPA notified the public of the Complaint via the internet at www.epa.gov/region6/publicnotice, and afforded the public thirty (30) days to comment on the Complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

II. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3),

and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby
Orders that Respondent shall pay to the United States a civil penalty in the amount of Thirty Four
Thousand Three Hundred and Seventy-Five (\$34,375) Dollars to settle the violations as alleged
in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

13. Payment shall be made within thirty (30) days of the effective date of this CAFO by
mailing a cashier's check or certified check, payable to "Treasurer of the United States," to the
following address:

Regional Hearing Clerk
U.S. EPA, Region 6
P.O. Box 371099M
Pittsburgh, PA 15251

In the Matter of Texas Department of Transportation, Docket No. CWA-06-2006-2101, should
be clearly marked on the check to ensure credit for payment.

14. Respondent shall send simultaneous notice of payment, including a copy of each check,
to each of the following:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Chief, Compliance Monitoring (6EN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Chief, Water/RCRA Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer or of any costs related to the implementation of the SEP as described in this document.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

17. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

18. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 20 percent of the aggregate amount of such person's outstanding Penalties and nonpayment penalties accrued as of the beginning of each quarter.

19. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

20. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

B. SUPPLEMENTAL ENVIRONMENTAL PROJECT

21. Respondent shall implement a SEP, which the parties agree is intended to secure significant environmental or public health protection and improvement. The SEP involves the development and implementation of management system components focused on improving

environmental compliance and performance at all Road Construction Projects undertaken by Respondent or Respondent's contractor.

22. Respondent shall begin development and implementation of the SEP upon the effective date of the Final Order. The Respondent shall develop and implement all requirements of the SEP within two thousand two hundred fifty (2,250) days of the effective date of the Final Order.

23. The Respondent's total expenditure for the SEP shall not be less than One Million (\$1,000,000) Dollars. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts, or federal grants. The money will fund Respondent's development and implementation of the long-term, statewide construction oversight program (COP) described in this CAFO, and will benefit the environment by aiding Respondent in its continued commitment to environmental compliance.

24. Respondent shall submit deliverables in development and implementation of this SEP. Among those deliverables, the Respondent shall submit three primary deliverables, including a Pilot COP Implementation Manual, a statewide COP Implementation Manual, and a statewide COP Implementation Verification Review Report. Given the importance of these three (3) SEP deliverables, the stipulated penalty for failure to provide each of these deliverables on the day they are due, as described in this document, shall be Two Thousand and Five Hundred (\$2,500) Dollars per day for each day after the due date that they are not received by EPA. All other SEP deliverables required under this document shall be assessed a stipulated penalty of Two Hundred and Fifty (\$250) Dollars per day for each day after the due date that they are not received by EPA. Full performance of this SEP, which may exceed One Million (\$1,000,000) Dollars in costs to develop and implement, is of vital importance to the parties. Hence, receipt of the SEP

Completion Report is vital in that it certifies that the SEP has been fully implemented statewide by the Texas Department of Transportation. Therefore, Respondent agrees to pay stipulated penalties of Ten Thousand (\$10,000) Dollars for each day, after the due date identified in this document, that the SEP Completion Report is not submitted to EPA per the terms of this agreement. For all documents Respondent must submit under the terms of this agreement should Respondent encounter unforeseen delays, it shall seek EPA's consent to extend the schedule, and that consent shall not be unreasonably withheld. This paragraph shall not be subject to dispute resolution, and EPA shall have the final decision on whether to extend the schedule. Requests to extend the schedule shall be made in writing and not less than 30 days before the document is due.

25. Whether Respondent has complied with the terms of this CAFO regarding the implementation of the SEP shall be the sole determination of EPA.
26. Respondent shall develop and implement the SEP in accordance with the terms of this agreement. Any modifications to this agreement must be made in writing. No oral modifications to this agreement are allowed.
27. Nothing herein shall obligate Respondent to publicize its involvement in the SEP; however, any public statement, oral or written, made by Respondent to publicize its participation in SEP activities shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of CWA provisions."
28. Respondent by execution of this CAFO, certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any

federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

29. Definitions. Except as specifically provided in this Order, definitions for the terms used in this Order shall be incorporated from federal statutes, including the Clean Water Act and the regulations promulgated pursuant to that Act. Whenever terms listed below are used in this Order the following definitions apply:

- a) Best Management Practices (BMPs) - Schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control construction site runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.
- b) Clean Water Act - the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 - 1387.
- c) EPA - U. S. Environmental Protection Agency.
- d) Construction Contract - A Department Contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or reconstruction of a segment of the State highway system.
- e) Construction Inspector - The person assigned by the Engineer to inspect for compliance with the Contract any or all parts of the work and the materials used.

- f) Contract - The agreement between the Department and the Contractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.
- g) Contract Documents - Elements of the Contract including but not limited to the plans, specifications incorporated by reference, special provisions, special specifications, Contract bonds, change orders, and supplemental agreements.
- h) Contractor - The individual, partnership, limited liability company, corporation, or joint venture and all principals and representatives with which the Contract is made by the Department.
- i) Department. - The Texas Department of Transportation (TxDOT).
- j) Easement - A real property right acquired by one party to use land belonging to another party for a specified purpose.
- k) Engineer - The Executive Director of the Department or the authorized representative of the Executive Director.
- l) Environmental requirements - Shall mean all applicable federal, state, and local environmental statutes and regulations, including permits and enforceable agreements between the Department and the respective environmental regulatory agencies, which must be addressed during a Department Road Construction Project.
- m) Inspection Form - Department Form 2118, dated 11-07-2003, and any current subsequent revision.
- n) Notice of Intent - a request for coverage under a Permit.

- o) Licensed Professional Engineer - A person who has been duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas; also referred to as a Professional Engineer.
- p) Limits of Construction - An area with established boundaries, identified within the highway right of way and easements, where the Contractor is permitted to perform the work.
- q) Plans - The drawings approved by the Engineer including true reproductions of the drawings that show the location, character, dimensions, and details of the work and are a part of the Contract.
- r) Project-Specific Location (PSL) - A material source, plant, waste site, parking area, storage area, field office, staging area, haul road, or other similar location either outside the project limits or within the project limits but not specifically addressed in the Plans, Specifications, and Estimates. PSLs defined here are the work areas that exist only for the specific Contract.
- s) Permit - the permits issued by EPA and published on September 9, 1992 (57 Fed. Reg. 41217 – 41226), February 17, 1998 (63 Fed. Reg. 7858 - 7920), July 6, 1998 (63 Fed. Reg. 36489 - 36519), and July 1, 2003 (68 Fed. Reg. 39087 - 39091) and any amendments thereto, or, any permit governing storm water discharges from construction activities issued by a state authorized pursuant to 33 U.S.C. § 1342(b) and the regulations implementing that provision. Other applicable permits generally under any regulatory program.

- t) Project Site - Any location within the limits of construction for which the Department either (i) has operational control over construction plans and specifications, and the ability to make modifications to those plans and specifications or (ii) has day-to-day operational control of those activities at a Road Construction Project.
- u) Proposed COP Implementation Verifier - Defined as described in Paragraph 1.4.1.
- v) Right of Way - A general term denoting land or property devoted to transportation purposes.
- w) Road Construction Project - Road construction operation that includes any of the following associated activities: earth work, concrete work, asphalt work, steel work, masonry work, demolition work, excavation work, fill work, land clearing, grading, soil stabilization, equipment operation, de-watering activities, material storage, waste management, waste disposal and waste recycling activities. Under this definition, construction also includes project specific locations, such as concrete and asphalt batch plants, within the Right-of-Way. The term construction does not include routine or preventative roadway maintenance activities.
- x) Roadway - the portion of the highway (including shoulders) used by the traveling public.
- y) Special Provisions - Additions or revisions to the Department standard specifications or special specifications.
- z) Special Specifications - Supplemental specifications applicable to the Contract not covered by the Department standard specifications.

- aa) Specifications - The Department directives or requirements issued or made pertaining to the method and manner of performing the work or to quantities and qualities of materials to be furnished under the Contract.
- bb) State - The State of Texas.
- cc) Subcontractor - An individual, partnership, limited liability company, corporation, or any combination thereof that the Contractor sublets, or proposes to sublet, any portion of a Contract, excluding a material supplier, truck owner-operator, wholly owned subsidiary, or specialty-type businesses such as security companies and rental companies.
- dd) Superintendent - The representative of the Contractor who is available at all times and able to receive instructions from the Engineer or authorized Department representatives and to act for the Contractor.
- ee) Supplemental Agreement - Written agreement entered into between the Contractor and the State and approved by the Surety, covering alterations and changes in the Contract. A supplemental agreement is used by the Department whenever the modifications include assignment of the Contract from one entity to another or other cases as desired by the Department.
- ff) SWPPP - Shall mean a Storm Water Pollution Prevention Plan or other plan for controlling pollutants in storm water discharges from Project Sites.
- gg) Texas General Permit - Texas Storm Water Construction General Permit No. TXR150000 (CGP).

hh) Work - The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Contract.

C. SEP DESCRIPTION – CONSTRUCTION OVERSIGHT PROGRAM

30. Purpose of SEP. The express purpose of this SEP is to further the objectives of Environmental Requirements applicable to the Department Road Construction Projects. All obligations in this SEP shall have the objective of causing the Department to be and remain in full compliance with the Environmental Requirements. Indeed, the actions required by this SEP assure that the Department's operations will go above and beyond Environmental Requirements. This objective will be accomplished through the development of management system components focused on improving environmental compliance and performance at, and limited to, Department Road Construction Projects, with emphasis on storm water requirements. In this agreement, these environmental compliance-focused management system components collectively referred to as a COP.

31. The Department shall develop and implement a pilot phase COP for the purpose of ensuring compliance with construction related environmental requirements. The COP will address, at a minimum, the six (6) key elements presented in Paragraph 35 below. The COP shall be implemented in three pilot districts representative of the Department's statewide highway construction program.

32. Within thirty (30) days of the effective date of this Order, the Department will provide the following information in writing to EPA:

- a) The names of personnel selected by the Department to a COP Initial Survey and Development Team, which shall include a person experienced with designing,

developing and implementing environmental management systems. The COP development team personnel will conduct an initial review and evaluation of the Department's current COP systems related to environmental requirements.

- b) Evidence that the team members are sufficiently qualified, meaning that they have, in composite, a working process knowledge of the Department operations or similar operations, and have a working knowledge of the environmental requirements which apply to the Department construction projects.
- c) The schedule, including milestones, for conducting an initial COP Review and Evaluation.

33. The Department will direct the COP Initial Survey and Development Team identified pursuant to Paragraph 32 to conduct and complete an initial COP Review and Evaluation (*i.e.*, a "gap" analysis) for Department Construction Projects. The designated Team will review and evaluate the current COP management practices and systems, using, at a minimum, the elements described in Paragraph 35, below to identify where systems or subsystems have not been adequately developed or implemented. The results of the COP Initial Survey and Development Team's Review and Evaluation will be documented in a report to be completed within one hundred twenty (120) days after the effective date of this Order, and provided to EPA for review, within one hundred twenty (120) days after the effective date of this Order.

34. Based on the COP Initial Survey and Development Team's Review and Evaluation results and other information, the Department shall within **four hundred (400) days** of the effective date of this Order, submit to EPA a COP Pilot Phase Implementation Manual for review and approval. Technical Review of the COP Implementation Manual will be performed by a

subject matter expert at EPA's National Enforcement Investigations Center in Denver, Colorado. EPA's approval of the Manual will be based on whether it satisfies the criteria presented in this paragraph for the key elements described in Paragraph 35.a. through f., below.

a) The initial implementation of the COP will be conducted as COP pilot programs in three district offices with subsequent implementation of the COP in all of TxDOT's other district offices.

b) The COP Pilot Phase Implementation Manual shall describe and document the comprehensive COP elements as described in Paragraph 35 and the plan and schedule for implementing the pilot phase COP within the Department districts of Dallas, Waco, and Yoakum.

c) At a minimum, the COP Pilot Phase Implementation Manual will for each of the elements identified in Paragraph 35, below, describe in detail how activities or programs are, or will be, (1) established as a formal system, subsystem or task, (2) integrated into ongoing Department Road Construction Projects, and (3) continuously evaluated and improved.

d) The COP Pilot Phase Implementation Manual shall also describe the process (including a schedule with milestones) for selecting one Road Construction Project in each pilot district and applying the Stormwater Runoff and Erosion Control provisions of Paragraph 50.

35. The COP Pilot Phase Implementation Manual shall be organized to clearly address the following key elements, and, at a minimum, shall describe respective management systems, subsystems, programs, and tasks.

a) Policy Statement - The Department shall develop a policy statement upon which the COP is based. The policy must clearly communicate management's commitment to achieving

compliance with applicable environmental requirements, minimizing risks to the environment and continual improvement in environmental performance. The policy should also state management's intent to provide adequate personnel and other resources for the COP.

b) Roles and Responsibilities - Clearly defines and communicates to all applicable organizational units within the Department's organizational structure and, as applicable, to Contractors their roles and responsibilities associated with an environmental requirement. The COP Pilot Phase Implementation Manual will also clearly define and communicate for applicable Department personnel the expected roles and responsibilities related to any environmental requirement. As a minimum, roles and responsibilities with respect to compliance with environmental requirements shall be described for the following positions:

- i. District Engineer
- ii. Engineer
- iii. District Environmental Quality Coordinator (DEQC)
- iv. Department Construction Inspector
- v. Contractor Superintendent

c) Environmental Requirements - Contains a protocol that sets forth procedures to identify, interpret, document, and communicate to affected personnel those environmental requirements applicable to each Department Road Construction Project during field operations occurring within the Right-of-Way. Any additional training requirements resulting from development of this protocol shall be incorporated into the Training Matrix described in Paragraph 35.e.

- i. Further, the protocol shall provide for monitoring construction activities occurring within the Right-of-Way for conformance to those requirements. The protocol shall also address identifying, obtaining, and evaluating information

about changes and proposed changes in environmental requirements that could potentially apply to and/or impact construction operations.

ii. The protocol shall describe, at a minimum, the following elements:

(1) The process for initially identifying applicable and potentially applicable environmental requirements.

(2) The process for interpretation and assessment of applicability, as necessary, through an identified network of designated knowledgeable individuals, defined as those environmental professionals within the Environmental Affairs Division, other divisions, if applicable, and the three pilot districts, who are familiar with roadway construction, environmental requirements, and other aspects of operations that could affect the environment and/or compliance.

(3) The implementation process within the three pilot districts shall include a communication procedure for disseminating information on applicable and/or potentially applicable environmental requirements to, as a minimum, the respective DEQC, Engineer, Construction Inspector, and the Contractor's Superintendent.

d) Assessment, Prevention, and Control - The COP Pilot Phase Implementation

Manual will describe an ongoing process for assessing construction operations for the purpose of maintaining compliance with statutory and regulatory environmental requirements. The COP

Pilot Phase Implementation Manual will describe the following:

- i. Monitoring and measurements procedures, as appropriate, to ensure sustained compliance. This shall include metrics for which data will be collected during the pilot phase that will be used for program evaluation at the conclusion of the pilot phase.
 - ii. The process for identifying operations and activities where documented standard operating practices (SOPs) are needed to assure compliance with an environmental requirement.
 - iii. A uniform process for developing, approving and implementing necessary SOPs to assure compliance with an environmental requirement.
 - iv. A system for conducting and documenting routine, objective, self inspections by trained Department personnel and trained construction contractor personnel to check for malfunctions, deterioration, worker adherence to SOPs, and potential noncompliance with an environmental requirement.
 - v. Describes a process to ensure operational changes noted during ongoing construction projects that are required to meet environmental requirements are conveyed to the design staff for incorporation into future project designs.
- e) Training, Awareness, and Competence - The COP Pilot Phase Implementation Manual will describe a procedure to identify specific education and training required for applicable Department and Contractor personnel, as well as, processes for documenting completion of training. The COP Pilot Phase Implementation Manual shall identify appropriate training to ensure that applicable Department and Contractor personnel are aware of Department's COP and supporting environmental policies and procedures, environmental

requirements, and their roles and responsibilities within the COP. The COP Pilot Phase Implementation Manual shall describe procedures for ensuring that Department and Contractor personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience. Specifically, the Manual shall contain:

i. A Training Matrix that presents environmental and other related training required for all Department and Contractor personnel directly involved in road construction projects. The Manual shall provide for updating the Training Matrix at least annually. Positions to be addressed in the Training Matrix include at least the following:

- (1) District Engineer
- (2) Engineer
- (3) DEQC
- (4) Construction Inspector
- (5) Contractor Superintendent

ii. Trainer qualification requirements for each identified course

iii. A requirement for developing an annual training plan for presenting the course(s) identified in the Training Matrix.

iv. A description of how the training will be reinforced on road construction projects in order to maintain increased employee and contractor awareness and involvement in meeting applicable environmental requirements.

v. A description of how a periodic (minimum of at least one annually) evaluation of the training program, including the procedure for identifying

training needs, will occur and how the Department plans to incorporate the results into program improvements.

f) Maintenance of Records and Documentation - The COP Pilot Phase

Implementation Manual will identify the types of records developed in support of the COP (including assessments and reviews), who maintains them and where, and procedures for responding to inquiries and requests for release of information. The COP Pilot Phase Implementation Manual will specify document control procedures.

36. During the development and implementation of the documents and activities contemplated by this CAFO, EPA and the Department agree to routinely meet and confer on matters related to the SEP. While the Department shall maintain sole responsibility for timely completion of all documents and activities it has undertaken under this CAFO, and while EPA shall limit its ultimate role to review and approval of these documents in a timely manner, the two parties nonetheless agree to cooperate when necessary.

37. If EPA disapproves of the COP Pilot Phase Implementation Manual, the Department will, within sixty (60) days of receipt of EPA's comments on the proposed COP Pilot Phase Implementation Manual, submit to EPA a revised COP Pilot Phase Implementation Manual that addresses EPA's comments. If the Department disagrees with EPA's comments, the Department may invoke the dispute resolution procedure presented in Paragraph 52.

38. Within sixty (60) days of EPA's approval of the Pilot Phase Implementation Plan, the Department will commence implementation of the pilot phase COP at the following three districts: Dallas, Waco, and Yoakum, in accordance with the schedule contained in the COP Pilot

Phase Implementation Manual. The process of selecting and implementing the Appendix A pilots shall commence concurrently with COP pilot phase implementation.

39. The Department will submit quarterly Pilot Project status reports to EPA. The status reports will be due on the 15th day of the month following the close of each state fiscal quarter. The first report will be submitted following the first full quarter after the Department commences implementation.

40. Evaluation Team Report. The Department shall develop and submit a COP Pilot Phase Evaluation Report within one thousand (1000) days of the effective date of this Order. The Department shall assemble a team of objective qualified individuals to evaluate (1) whether the COP was effectively implemented within each of the three pilot districts, (2) whether the COP improved environmental compliance and performance at road construction projects, and (3) to identify where further improvements need to be made to the COP before statewide implementation. "Qualified individuals" means that the evaluation team members have, in composite, a working process knowledge of Department operations or similar operations, a working knowledge of how to design and implement environmental management systems, and have a working knowledge of the environmental requirements which apply to Department construction projects. The team should include a management systems consultant and, in order to ensure objectivity, the members must not be from any of the three pilot districts. The COP Pilot Phase Evaluation Report shall present the evaluation findings and shall, at a minimum, contain the following information:

- a) Identification of evaluation team members and their qualification;

b) whether there is a defined system, subsystem, program, or planned task for the respective COP elements;

c) to what extent the system, subsystem, program, or task has been implemented, and is being maintained;

d) adequacy of internal self-assessment procedures for programs and tasks composing the COP; and the adequacy of the procedures for implementing any necessary improvements to programs and tasks composing the COP.

e) whether the Department is effectively communicating environmental requirements to affected parts of the organization and to the Department Contractors;

f) whether there are observed deviations from the COP written requirements or procedures;

g) whether and where the COP improved environmental compliance and performance at road construction projects, especially those where Appendix A requirements were implemented;

h) whether further improvements should be made to the COP;

i) a summary of the evaluation process, including any obstacles encountered;

j) certification by the Executive Director that the COP evaluation was conducted in accordance with the provisions of this Order.

41. Using the results of the COP Pilot Phase evaluation, the Department shall develop and implement a statewide COP for the purpose of ensuring compliance with environmental requirements related to road construction projects. The COP shall include systems, subsystems, programs, and tasks consistent with the six (6) key elements presented in Paragraph 35 above.

42. Within one hundred eighty (180) days after completion of the COP Pilot Phase Evaluation Report, the Department shall submit to EPA for review and approval, a statewide COP Implementation Manual, based on the Pilot Phase Evaluation Report and other information. The statewide COP Implementation Manual shall describe and document the comprehensive COP elements, and the plan and schedule for implementing the COP. In no case shall the statewide COP implementation schedule extend beyond seven hundred and thirty (730) days from the date EPA approves the statewide COP Implementation Manual.

a) Technical Review of the COP Implementation Manual will be performed by a subject matter expert at EPA's National Enforcement Investigations Center in Denver, Colorado. Ultimate EPA approval of the Manual will be based on whether it describes systems, subsystems, programs and tasks consistent with (1) the criteria presented in this paragraph for the key elements described in Paragraph 40 a. through f., above, and (2) the results and recommendations presented in the COP Pilot Phase Evaluation Report.

b) If EPA disapproves the COP Implementation Manual, the Department will, within sixty (60) days of receipt of EPA's comments on the proposed COP Implementation Manual, submit to EPA a revised COP Implementation Manual that addresses EPA's comments. If the Department disagrees with EPA's comments, the Department may invoke the dispute resolution procedure presented in Paragraph 51.

43. Right of Entry

a) Until termination of this Order, EPA, their authorized representatives, contractors, consultants and attorneys and their contractors and consultants shall each have the authority to

enter, at reasonable times and upon presentation of credentials, any Project Site or any location at which records relating to this Order are kept for the purposes of:

- i. monitoring Department's compliance with this Order;
- ii. verifying any data or information records or reports developed pursuant to this Order;
- iii. obtaining samples from any Project Site and, upon request, splits or duplicates of any samples taken by Department, its contractors or consultants; and
- iv. reviewing and copying any records required to be kept by Department or Responsible Contractor pursuant to this Order.

b) To the extent that EPA seeks to review records maintained at a location other than a Project Site, EPA and Department shall jointly arrange for such review. Department shall make such records available to EPA at a reasonable time and location. Nothing in this subparagraph (b) shall be construed to restrict Complainant's right to review records at a Project Site.

44. No Limitation on Other Rights of Entry. Nothing in Paragraph 43 (Right of Entry) or any other provision of this Order shall be construed to limit any statutory right of entry or access or other information gathering authority pursuant to any federal, state, or local law.

45. Preservation of Records. In addition to complying with any other applicable local, state, or federal records preservation requirements, until one calendar year after termination of this Order, the Department shall preserve at least one legible copy of all documents in its possession, custody, or control that relate to the performance of the Department's or Contractor's obligations

under this Order. Within 30 days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Order, the Department shall enter into an agreement with any such agent, consultant, or contractor(s) requiring such person to provide the Department a copy of all documents relating to the performance of the Department's obligations under this Order.

46. Within one hundred and eighty (180) days of EPA's approval of the COP Final Implementation Manual, the Department shall propose to EPA an independent person or organization to verify statewide implementation of the COP (the "Proposed COP Implementation Verifier" or "Verifier") in accordance with the provisions of this Order and the approved statewide COP Implementation Manual.

a) The Proposed COP Implementation Verifier must (1) not have been involved in the development of the statewide or pilot COP; (2) satisfy or meet the Defense Emergency Management System (EMS) Auditor qualification requirements of Table 1 of ISO 19011 (First edition, 2002-10-01), provided that the proposed Verifier need not be certified pursuant to ISO 19011 or any other standard, (3) have expertise and competence in regulatory programs under federal and state laws, and (4) have at least a bachelor's degree from an accredited institution. In addition, the proposed Verifier must be capable of exercising independent judgment and discipline in performing the verification of statewide COP implementation. The proposed Verifier may be an employee of the Audit Group that reports to the Department's Executive Board or a state auditing agency, provided the selected person or team, in composite, satisfies the qualification criteria stated herein.

- b) EPA shall expeditiously notify the Department whether the proposed Verifier meets the qualification set forth in the previous subparagraph. If EPA disapproves the Department's selection of such proposed Verifier, then, the Department shall propose another proposed Verifier to EPA within thirty (30) days of the Department's receipt of EPA's determination.
- c) The Department shall require the approved Verifier to prepare a draft statewide COP Implementation Verification Review ("Review") Plan ("Plan") and provide it to the Department and EPA for review and comment. The Department shall require the Verifier to plan the Review so as to evaluate the adequacy of COP implementation, from top management down, throughout each District, based on a representative sample. The draft Plan shall be submitted within ninety (90) days after EPA's approval of the proposed Verifier.
- d) Within 30 days of receipt of EPA's comments, the Department shall direct the Verifier to develop a final Plan that incorporates EPA's comments, and which shall be followed during conduct of the statewide Review performed pursuant to this Order. The Department shall direct the Verifier to concurrently submit the final Plan to EPA and the Department upon completion. The Review shall be completed within three hundred (300) days of submission of the statewide COP Verification Plan.
- e) Designated representatives from EPA and other environmental regulatory agencies, such as the Texas Commission on Environmental Quality (TCEQ), may participate in the Review as observers. The Department shall make timely notification to designated regulatory contacts regarding Review scheduling in order to make arrangements for observers to be present.

The Department personnel may also participate in the on-site Review as an observer(s), but may not interfere with the independent judgment of the Verifier

f) Statewide COP Implementation Verification Review Report. The Department shall direct the statewide COP Verification Reviewer to develop and concurrently submit a statewide COP Implementation Verification Review Report (Report) to the Department and EPA for the Review as required by this Order, within sixty (60) days following the completion of the on-site portion of Review. The Report shall present the Implementation Verification Review findings and shall, at a minimum, contain the following information:

- i. review scope, including the period of time over which the Review was conducted;
- ii. the date(s) the on-site portions Review were conducted;
- iii. identification of all participating Verifiers;
- iv. identification of the Department representatives and regulatory agency personnel observing the Review;
- v. the distribution for the Report;
- vi. a summary of the Review process, including any obstacles encountered;
- vii. detailed Review findings, including the basis for each finding and each Area of Concern identified;
- viii. identification of any Review findings corrected or Areas of Concern addressed during the Review, and a description of the corrective measures and when they were implemented; and,

- ix. certification by the Verifier that the Review was conducted in accordance with the provisions of this Order.

47. Respondent shall submit a SEP Completion Report to EPA after completion of all SEP activities. The SEP Completion Report shall contain the following information:

- a) a detailed description of the SEP as implemented;
- b) a description of any operating problems encountered and the solutions thereto;
- c) documented itemized costs of the SEP, *e.g.*, TxDOT labor costs, Consulting and Professional services contracts, equipment costs, and materials purchased associated with implementation of the SEP;
- d) certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- e) description of the environmental benefits and environmental performance improvements resulting from implementation of the SEP.

48. In the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by its directors, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the 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."

49. Upon completion of statewide COP implementation and receipt of both the Statewide COP Verification Report and the SEP Completion Report, the Department Executive Director

shall certify to EPA that any necessary corrective actions to correct nonconformances have been completed and such implementation has been completed.

50. COP Requirements Specific to Storm Water Runoff and Erosion Control. These requirements apply to three (3) Road Construction Projects that meet the following requirements, if possible:

a) The Engineer's Estimate has a cost in excess of \$10 million for the Department's Dallas or Waco Districts (\$5 million for Yoakum District)

b) The Engineer's Estimate has a duration in excess of 12 months for the Department's Dallas or Waco Districts (6 months for Yoakum District)

c) Requires a Notice of Intent (NOI) to be submitted pursuant to the CGP

d) If possible, the project be subject to environmental regulatory requirements under multiple statutes.

e) QUALIFICATION OF KEY PERSONNEL

i. Department Engineer. Each Department project shall have a qualified Licensed Professional Engineer who is responsible for coordinating oversight of storm water compliance and compliance with other Environmental Requirements by the Department and its Contractors at each project site requiring a NOI. "Qualified" shall mean that the respective Engineer (1) has completed the Department's Storm Water and Erosion Control (ENV102) training or equivalent and (2) is able to adequately identify and implement storm water sediment and erosion control practices; and (3) effectively instruct Department employees and Contractors in the implementation of such practices; provided, however, that the Engineer shall have 180 days after the effective date of this Order to complete any necessary training. If, at any time,

Department wishes to hire an additional or replacement Engineer, that person shall meet the qualifications criteria contained in this Paragraph. Any person performing the duties of an Engineer on an interim basis must also meet the qualifications criteria contained in this Paragraph.

ii. Department Construction Inspectors. For each project site, before the initiation of ground-disturbing activities, the Department shall designate a Department Construction Inspector responsible for conducting the weekly inspections required by the CGP and for otherwise monitoring compliance with this Order, applicable Environmental Requirements, the SWPPP and the requirements of any applicable Permit at that project site. Each Department Construction Inspector shall (i) have completed the Department's ENV102 training or equivalent (ii) be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct other Department employees and/or the Contractor in the implementation of such practices; provided, however, that any Construction Inspector employed by the Department on or after the effective date of this Order shall have 180 days from the later of the date of employment of such Construction Inspector or the effective date of this Order to meet the qualifications set forth in this Paragraph.

iii. Contractor Superintendent. The Department shall require the respective Contractor for each Project Site to designate a Superintendent who (i) is responsible for overseeing activities and work at a Project Site; (ii) has the authority to direct employees and contractors to undertake actions to comply with a Permit, the Clean Water Act, and the Project Site's SWPPP. The Department shall require the Contractor to certify to the Department in writing before the initiation of ground-disturbing activities that the Superintendent: (i) has

completed the Department's ENV102 training or equivalent and (ii) is able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and subcontractors in the implementation of such practices; provided, however, that Superintendents identified by Contractors shall have 180 days after execution of the contract to complete any necessary training.

f) TRAINING REQUIREMENTS

i. The Department's ENV102 training or equivalent. That course shall be required for, at least, the Department Engineers, the Department Construction Inspectors and the Contractor Superintendents.

ii. The Department's ENV102 training or equivalent course shall provide for at least 12 hours of instruction, including classroom and practical field training in the following areas: (1) overview of potential storm water pollution caused by erosion and sediment, other environmental impacts of road construction and repair projects, and the importance of erosion and sediment control during these projects; (2) the Department's Roadway Construction Environmental Policy (note: this would be a new document that does not currently exist); (3) overview of state storm water regulations and permits, (4) the Department's SWPPP development guidance; (5) principles of erosion and sediment control; (6) selection and implementation of BMPs for sediment and erosion control; (7) requirements of this Order, including inspection requirements, and the roles and responsibilities of the Engineer, Construction Inspector and Superintendent; and (8) Department standard construction contract requirements relating to storm water compliance.

iii. This course shall also provide for a written exam designed to determine proficiency in the principles, practices, and legislation of erosion and sediment control and the requirements of this Order.

iv. Refresher Training shall cover and review areas identified by the required SWPPP inspections, design changes or other factors, which would necessitate additional training. The training shall also address the potential regulatory and environmental consequences of departure from specified operating procedures, such as non-compliance and/or pollutant releases to the environment.

v. For each project in each Pilot District selected for implementing the provisions of this Attachment, the Pilot Phase Training Matrix shall be amended to include training required for Contractor Superintendents and employees directly involved with earthmoving or construction activities subject to environmental requirements. This training will be focused on, and limited to, environmental regulations that apply to a Road Construction Project.

g) PROJECT SITE MONITORING AND INSPECTIONS

i. The Department shall require that the Contractor monitor or provide for monitoring of the implemented BMPs on each Working Day during which construction activities occur at a Project Site. The Department shall require that the Contractor monitor the entire Project Site to observe and, if necessary, improve the effectiveness of implemented BMPs and inform the Department of any required improvements or changes that need to be made to comply with the CGP and to eliminate or reduce to the extent feasible any discharges from the Project Site into waters of the United States. If authorized by the applicable permit, the Department may

authorize the Superintendent to reduce the monitoring frequency to once each month if the entire Project Site is temporarily stabilized. The Department shall require the Superintendent to resume daily monitoring as soon as the Project Site no longer meets this condition.

ii. The Department shall require the Contractor to complete all repairs or modifications to the BMPs identified as necessary during the weekly and monthly inspections described in subparagraphs d. and e., below, as soon as practicable. However, if the repairs or modifications cannot be completed within 2 Working Days, the Department shall require the Contractor to initiate and complete the repairs as soon as practicable. The Department shall record all repairs and modifications to the BMPs.

iii. The Department shall require the Construction Inspector to conduct at least a weekly inspection of the entire Project Site to ensure compliance with the CGP and SWPPP. If authorized by the applicable permit, the Department may authorize the Construction Inspector to reduce the monitoring frequency to once each month if the entire Project Site is temporarily stabilized. The Department shall direct the Construction Inspector or require the Contractor Construction Inspector to resume weekly inspections as soon as the Project Site no longer meets this condition.

iv. At least once a month, the Engineer shall accompany the Construction Inspector on a scheduled weekly inspection of the Project Site. In addition, the Engineer shall review the Construction Inspector's weekly inspection reports prepared since the last monthly inspection and ensure that all corrective action noted as necessary and appropriate on the inspection reports have been completed as required. The Engineer shall identify, in writing, any changes in the inspection and oversight procedures that are necessary to ensure compliance with

this Order, the Clean Water Act, and any applicable Permits and address any pattern of deficiencies identified in the Contractor's implementation of the CGP and SWPPP. The Department may suspend its monthly inspections by the Engineer during any period in which the Project Site is temporarily stabilized. The Engineer shall resume its monthly inspections whenever the Project Site no longer meets this condition.

v. If, during either a weekly or a monthly inspection, the Construction Inspector or the Engineer determines that any BMP requires repair or that the Project Site is not in compliance with the requirements of this Order, the Clean Water Act or any applicable Permit, the Construction Inspector or Engineer shall identify on the Inspection Report the actions necessary to repair the BMP or bring the Project Site into compliance with the requirements of this Order, the Clean Water Act, and any applicable Permit or to address any pattern of deficiencies identified by the Construction Inspector or Engineer.

vi. Construction Inspectors noting potential noncompliance issues with the CGP and SWPPP during a weekly inspection shall submit the Inspection Report for that inspection to the respective Engineer within 5 Working Days of completing the inspection.

vii. The Department shall require the Contractor, upon completion of the action(s) indicated in the Inspection Report completed by either the Engineer or Construction Inspector, to provide written notification that the Contractor has taken all identified actions, as necessary to repair the BMP or bring the Project Site into compliance with the requirements of this Order, the Clean Water Act and any applicable Permit or to address any pattern of deficiencies identified during the inspections. The notification shall be submitted to at least the

respective Construction Inspector. The Inspection Reports and related Contractor written notification of any corrective actions shall be maintained together in the SWPPP.

viii. If at any time there are actual discharges of pollutants from the Project Site resulting from a deficiency observed during daily monitoring, or weekly or monthly inspections, the Department shall ensure that such discharges are eliminated or reduced to the extent feasible as soon as practical but no later than one (1) Working Day after the observation of the discharges. Further, nothing in this Paragraph shall be construed to limit the authority of any state, local, tribal, or federal agency to enforce any Permit or to issue orders to the Department to take immediate corrective action.

h) TEMPORARY ALTERATION OF BMPs: If, during the course of construction at a Project Site, the temporary removal or alteration of a BMP is necessary to accomplish the construction or to protect health and safety, the Department shall require the Contractor to notify the Department of such removal or alteration if the BMP will not be restored by the end of the same Working Day. The Department shall require the Contractor to begin restoration of the BMP as soon as practicable but in no case later than two (2) Working Days after the completion of the activity that required the change. The Department shall require the Contractor to notify the Department when the restoration was completed. The Department shall take all reasonable measures to prevent discharges from the Project Site to the waters of the United States during the time that the BMP has been altered or removed, including, but not necessarily limited to timing the removal or alteration of the BMP so that it occurs when precipitation is not forecast and installing new or alternate BMPs outside the affected area.

i) **FINAL INSPECTION:** The Engineer for the Project Site shall perform an inspection of the Project Site to ascertain whether final stabilization of the Project Site areas has been attained in accordance with the CGP and the Project Site is eligible to terminate permit coverage. The Engineer shall sign and certify a report on the inspection. The Inspection Report shall be retained by the Department with the SWPPP as required by the CGP. If the Project Site areas have been finally stabilized in accordance with the CGP, the Department shall file a notice of termination of permit coverage. If the Project Site has not been stabilized in accordance with the CGP, the Department shall ensure that all stabilization has been completed and the final inspection repeated before a notice of termination is filed.

51. Termination of Order. Upon the Department's submission of the Department Executive Director's certification that the statewide COP has been fully implemented, this Order shall terminate.

D. DISPUTE RESOLUTION

52. After the Department submits the documents called for in paragraph 24, the Parties will meet to confirm the agreed upon components of the submittal as well as those items the parties disagree on. The Parties will allow two (2) weeks to resolve any differences. If there are still items the Parties disagree on, the Department's Environmental Director and the EPA Region 6's Division Director for Compliance Assurance and Enforcement will meet and attempt to resolve any differences. They will allow two (2) weeks for this process. If there are still items the two Directors disagree on, the Department's Assistant Executive Director for Engineering Operations and the EPA's Region 6 Deputy Regional Administrator (DRA) will meet and attempt to resolve any differences. They will allow two weeks for this process. If there are still items the DRA and

Assistant Executive Director disagree on, the Department's Executive Director and the EPA Region 6 Regional Administrator will meet and attempt to resolve any remaining differences. The Parties will allow two weeks for this process. For all other disputes that arise between the parties, the same process described above will serve as the dispute resolution process. If the Respondent objects to any decision or directive of EPA, the Respondent shall timely notify the following persons in writing of its objections, and the basis for those objections:

Chief, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, Water/RCRA Legal Branch (6RC-EW)
Assistant Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

E. NOTIFICATION

53. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Mr. Everett Spencer
Water Enforcement Branch
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Respondent: Director of Environmental Affairs Division
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483

F. MODIFICATION

54. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of EPA and Respondent, and such modification or amendment being filed with the Regional Hearing Clerk.

G. TERMINATION

55. At such time as Respondent believes that it has complied with all terms and conditions of this CAFO, Respondent may request that EPA advise whether this CAFO has been satisfied and terminated. EPA will respond to said request as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

H. RETENTION OF ENFORCEMENT RIGHTS

56. The EPA does not waive any rights or remedies available to the United States or EPA for any violations by Respondent of Federal or State laws, regulations, or permitting conditions following the entry of this CAFO. Notwithstanding any other provision of this CAFO, an enforcement action may be brought against the Respondent pursuant to Section 504 of the Act, 33 U.S.C. § 1364.

I. NO EPA LIABILITY

57. Neither EPA nor the United States Government shall be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns or contractors in carrying out activities pursuant to this CAFO, nor shall the EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out activities pursuant to this CAFO.

J. GENERAL PROVISIONS

58. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

59. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

60. Each party agrees to bear its own costs and attorneys fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

61. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

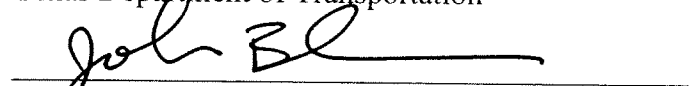
62. In recognition and acceptance of the foregoing:



Mr. Michael W. Behrens, P.E.
Executive Director
Texas Department of Transportation

2-9-07

Date



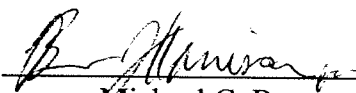
John Blevins
Director
Compliance Assurance
and Enforcement Division
Complainant

4.19.07

Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 309(g)(5) of the Clean Water Act, 33 U.S.C. § 1319(g)(5).

Issuance Date: 4-24-07

Michael C. Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of April, 2007, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States Mail, by certified mail, return receipt requested, addressed to the following:

Copy by certified mail,
return receipt requested:

Ms. Mary Perez, Director
Natural Resources Management Section
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 E. 11th Street
Austin, TX 78701-2483

Copy:

Mr. Bryan Sinclair, Manager
Enforcement Section I, MC169
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

APR 24 2007

