

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0825-AIR-E **TCEQ ID:** RN100219435 **CASE NO.:** 33558

RESPONDENT NAME: Cemex Construction Materials, L.P.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Cemex Concrete Products McKelligon Canyon, 1 McKelligon Canyon Road, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Rock crushing</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 15, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Jessica Rhodes, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2879; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Octavio Holguin, Environmental Manager, Cemex Construction Materials, L.P., 1 McKelligon Canyon Road, El Paso, Texas 79930 Mr. William L. Poole III, Vice President/General Manager, Cemex Construction Materials, L.P., 1 McKelligon Canyon Road, El Paso, Texas 79930 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 8, 2007</p> <p>Date of NOV/NOE Relating to this Case: May 11, 2007 (NOE)</p> <p>Background Facts: This was a Records Review Investigation and one violation was documented.</p> <p>AIR</p> <p>Failed to keep accurate records. Specifically, TCEQ staff documented that the Respondent did not keep accurate records of the daily and annual amounts of materials processed and the daily and annual operational hours for both the lower crusher (VERP) and the upper crusher (Red Rock). Failure to keep these records interfered with the ability to determine compliance with applicable emission limits [30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), Air Permit No. 47915, Special Condition No. 8, and Air Permit No. 48255, Special Condition No. 8].</p>	<p>Total Assessed: \$2,000</p> <p>Total Deferred: \$400 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,600</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin maintaining records sufficient to demonstrate compliance; and</p> <p>b. Within 30 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): EE0034D, Air Permit Nos. 47915 and 48255



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 26, 2007

TCEQ

DATES	Assigned	14-May-2007	Screening	23-May-2007	EPA Due	
	PCW	15-Jun-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Cemex Construction Materials, L.P.		
Reg. Ent. Ref. No.	RN100219435		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33558	No. of Violations	1
Docket No.	2007-0825-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Jessica Rhodes
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: There is no penalty adjustment.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts	\$366	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$3,500	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$2,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,000
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DEFERRAL	20% Reduction	Adjustment	-\$400
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$1,600
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Screening Date 23-May-2007

Docket No. 2007-0825-AIR-E

PCW

Respondent Cemex Construction Materials, L.P.

Policy Revision 2 (September 2002)

Case ID No. 33558

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100219435

Media [Statute] Air

Enf. Coordinator Jessica Rhodes

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

There is no penalty adjustment.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 23-May-2007

Docket No. 2007-0825-AIR-E

PCW

Respondent Cemex Construction Materials, L.P.

Policy Revision 2 (September 2002)

Case ID No. 33558

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN100219435

Media [Statute] Air

Enf. Coordinator Jessica Rhodes

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Tex. Health & Safety Code § 382.085(b), Air Permit No. 47915, Special Condition No. 8, and Air Permit No. 48255, Special Condition No. 8

Violation Description Failed to keep accurate records. Specifically, TCEQ staff documented that Cemex did not keep accurate records of the daily and annual amounts of materials processed and the daily and annual operational hours for both the lower crusher (VERP) and the upper crusher (Red Rock). Failure to keep these records interfered with the ability to determine compliance with applicable emission limits.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

Matrix Notes Greater than 70 percent of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 Number of violation days 509

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,000

Two single events, one for each set of records, are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$366

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent Cemex Construction Materials, L.P.
Case ID No. 33558
Reg. Ent. Reference No. RN100219435
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$3,000	30-Dec-2005	1-Feb-2008	2.1	\$314	n/a	\$314
Training/Sampling	\$500	30-Dec-2005	1-Feb-2008	2.1	\$52	n/a	\$52
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to implement employee training and develop a proper record keeping system to ensure that accurate operational hours and material amounts are recorded. Date required is the date that Cemex acquired ownership of the plant. Final date based is on the projected compliance date.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs
 (This section is currently blank in the provided image.)

Approx. Cost of Compliance \$3,500 **TOTAL** \$366

Compliance History

Customer/Respondent/Owner-Operator:	CN601440662	Cemex Construction Materials, L.P.	Classification: AVERAGE	Rating: 3.11																																																																											
Regulated Entity:	RN100219435	CEMEX CONCRETE PRODUCTS MCKELLIGON CANYON	Classification: AVERAGE	Site Rating: 1.15																																																																											
ID Number(s):	<table border="0" style="width: 100%; border-collapse: collapse;"> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>3384</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>3384A</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>5754</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>8848</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>697</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>3088</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>5332</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>6896</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>7139</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>7140</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>7142</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>20622</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>36448</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>47915</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>48255</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>ACCOUNT NUMBER</td><td>EE0034D</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>AFS NUM</td><td>4814100012</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>697</td></tr> <tr><td>AIR NEW SOURCE PERMITS</td><td>PERMIT</td><td>78747</td></tr> <tr><td>PETROLEUM STORAGE TANK</td><td>REGISTRATION</td><td>57795</td></tr> <tr><td>REGISTRATION</td><td></td><td></td></tr> <tr><td>WASTE WATER GENERAL PERMIT</td><td>PERMIT</td><td>TXG110421</td></tr> <tr><td>STORMWATER</td><td>PERMIT</td><td>TXR05K781</td></tr> <tr><td>STORMWATER</td><td>PERMIT</td><td>TXR05S950</td></tr> <tr><td>STORMWATER</td><td>PERMIT</td><td>TXR05U155</td></tr> </table>			AIR NEW SOURCE PERMITS	PERMIT	3384	AIR NEW SOURCE PERMITS	PERMIT	3384A	AIR NEW SOURCE PERMITS	PERMIT	5754	AIR NEW SOURCE PERMITS	PERMIT	8848	AIR NEW SOURCE PERMITS	PERMIT	697	AIR NEW SOURCE PERMITS	PERMIT	3088	AIR NEW SOURCE PERMITS	PERMIT	5332	AIR NEW SOURCE PERMITS	PERMIT	6896	AIR NEW SOURCE PERMITS	PERMIT	7139	AIR NEW SOURCE PERMITS	PERMIT	7140	AIR NEW SOURCE PERMITS	PERMIT	7142	AIR NEW SOURCE PERMITS	PERMIT	20622	AIR NEW SOURCE PERMITS	PERMIT	36448	AIR NEW SOURCE PERMITS	PERMIT	47915	AIR NEW SOURCE PERMITS	PERMIT	48255	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE0034D	AIR NEW SOURCE PERMITS	AFS NUM	4814100012	AIR NEW SOURCE PERMITS	PERMIT	697	AIR NEW SOURCE PERMITS	PERMIT	78747	PETROLEUM STORAGE TANK	REGISTRATION	57795	REGISTRATION			WASTE WATER GENERAL PERMIT	PERMIT	TXG110421	STORMWATER	PERMIT	TXR05K781	STORMWATER	PERMIT	TXR05S950	STORMWATER	PERMIT	TXR05U155	
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Location:	1 MCKELLIGON CANYON RD, EL PASO, TX, 79930	Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 06 - EL PASO		
Date Compliance History Prepared:	May 30, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 30, 2002 to May 30, 2007		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name:	Jessica Rhodes	Phone:	512-239-2879
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Site Compliance History Components

- | | |
|--|---|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | Cemex Construction Materials, L.P. |
| 4. If Yes, who was/were the prior owner(s)? | Jobe Concrete Products, Inc.
Cemex El Paso, Inc. |
| 5. When did the change(s) in ownership occur? | 4/1/2005
12/30/2005 |

Components (Multimedia) for the Site :

- | | | |
|----|---|--|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | |
| | N/A | |
| B. | Any criminal convictions of the state of Texas and the federal government. | |
| | N/A | |
| C. | Chronic excessive emissions events. | |
| | N/A | |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) | |
| | 1 10/15/2002 (13097) | |
| | 2 11/14/2002 (244855) | |
| | 3 11/14/2002 (244853) | |
| | 4 11/14/2002 (244854) | |

5	11/16/2002	(3294)
6	12/16/2002	(244856)
7	01/15/2003	(244857)
8	03/03/2003	(244850)
9	03/10/2003	(244851)
10	04/08/2003	(244852)
11	05/13/2003	(332217)
12	06/09/2003	(332218)
13	07/10/2003	(332220)
14	09/09/2003	(332221)
15	11/19/2003	(332222)
16	11/19/2003	(332223)
17	12/12/2003	(332224)
18	12/16/2003	(250796)
19	01/12/2004	(332225)
20	03/18/2004	(332215)
21	04/12/2004	(332216)
22	06/14/2004	(332219)
23	08/16/2004	(370125)
24	08/16/2004	(370126)
25	09/17/2004	(370127)
26	10/08/2004	(370128)
27	11/10/2004	(391842)
28	01/11/2005	(391843)
29	01/24/2005	(340094)
30	04/01/2005	(429333)
31	04/18/2005	(429334)
32	05/20/2005	(429335)
33	06/13/2005	(429336)
34	07/11/2005	(448906)
35	08/02/2005	(448908)
36	08/05/2005	(448907)
37	10/06/2005	(433673)
38	10/11/2005	(495728)
39	11/10/2005	(495729)
40	12/29/2005	(495730)
41	01/13/2006	(495731)
42	01/18/2006	(437055)
43	02/06/2006	(495727)
44	06/16/2006	(508013)
45	06/16/2006	(508014)
46	06/16/2006	(508015)
47	06/16/2006	(508016)
48	06/16/2006	(508017)
49	07/24/2006	(530320)
50	07/24/2006	(530321)
51	07/24/2006	(530322)
52	02/02/2007	(533866)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

F. Environmental audits.

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
CEMEX CONSTRUCTION
MATERIALS, L.P.
RN100219435**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-0825-AIR-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Cemex Construction Materials, L.P. ("Cemex") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Cemex appear before the Commission and together stipulate that:

1. Cemex owns and operates a rock crushing plant located at 1 McKelligon Canyon Road in El Paso, El Paso County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Cemex agree that the Commission has jurisdiction to enter this Agreed Order, and that Cemex is subject to the Commission's jurisdiction.
4. Cemex received notice of the violations alleged in Section II ("Allegations") on or about May 16, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Cemex of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Dollars (\$2,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Cemex has paid

One Thousand Six Hundred Dollars (\$1,600) of the administrative penalty and Four Hundred Dollars (\$400) is deferred contingent upon Cemex's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Cemex fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Cemex to pay all or part of the deferred penalty.

7. 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.
8. The Executive Director of the TCEQ and Cemex have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 Cemex has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, Cemex is alleged to have failed to keep accurate records, in violation of 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), Air Permit No. 47915, Special Condition No. 8, and Air Permit No. 48255, Special Condition No. 8, as documented during a record review conducted on May 8, 2007. Specifically, TCEQ staff documented that Cemex did not keep accurate records of the daily and annual amounts of materials processed and the daily and annual operational hours for both the lower crusher (VERP) and the upper crusher (Red Rock). Failure to keep these records interfered with the ability to determine compliance with applicable emission limits.

III. DENIALS

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

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the tools used for data collection.

3. The third part of the document presents the results of the study, including a comparison of the different methods and techniques used. It discusses the strengths and weaknesses of each method and provides a summary of the findings.

4. The fourth part of the document discusses the implications of the study and provides recommendations for future research. It highlights the need for further investigation into the effectiveness of the different methods and techniques used.

5. The fifth part of the document concludes the study and provides a final summary of the findings. It reiterates the importance of maintaining accurate records and the need for transparency and accountability in financial reporting.

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IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Cemex pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Cemex's compliance with all the terms and conditions set forth in this Agreed 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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Cemex Construction Materials, L.P., Docket No. 2007-0825-AIR-E" to:

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

2. It is further ordered that Cemex shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, begin maintaining records sufficient to demonstrate compliance, in accordance with Air Permit Nos. 47915 and 48255; and
 - b. Within 30 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

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Third block of faint, illegible text, continuing the main body.

Fourth block of faint, illegible text, possibly a concluding paragraph.

Fifth block of faint, illegible text, continuing the main body.

Sixth block of faint, illegible text, continuing the main body.

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with a copy to:

Air Section, Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon Cemex. Cemex is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Cemex fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Cemex's failure to comply is not a violation of this Agreed Order. Cemex shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Cemex shall notify the Executive Director within seven days after Cemex becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Cemex shall be made in writing to the Executive Director. Extensions are not effective until Cemex receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Cemex in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed 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.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Cemex, or three days after the date on which the Commission mails notice of the Order to Cemex, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data. The second part of the document provides a detailed breakdown of the financial data, including a list of all accounts and their respective balances. It also includes a summary of the total assets and liabilities, which shows that the organization is in a financially sound position. The final part of the document concludes with a statement of the auditor's findings and a recommendation for further action. It suggests that the organization should continue to maintain high standards of financial reporting and to regularly review its internal controls to ensure ongoing compliance with all relevant regulations.

In addition, the document highlights the need for regular communication between the management and the external auditors. This helps to identify any potential issues early on and allows for a more collaborative approach to resolving them. The document also notes that the organization's financial performance has improved significantly over the past year, which is a testament to the hard work and dedication of the staff. It is hoped that these findings will be used as a guide for future operations and that the organization will continue to grow and prosper. The document is signed by the auditor and dated as follows:

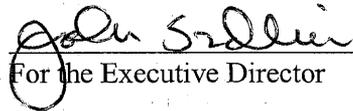
[Signature]
Date: 15/11/2023

The document is a professional report and should be treated as confidential. It is intended for the use of the management and the external auditors only. It should not be distributed to any other parties without the prior written consent of the auditor. The document is subject to the terms and conditions of the audit engagement letter. The auditor's liability is limited to the scope of the audit and does not extend to any other matters. The document is a true and accurate representation of the information provided to the auditor. It is the responsibility of the management to ensure that the information is complete and correct. The document is a valuable tool for the management and the external auditors to use in their respective roles. It provides a clear and concise summary of the organization's financial performance and helps to identify any areas for improvement. The document is a key component of the organization's financial reporting process and is essential for ensuring transparency and accountability. It is a testament to the organization's commitment to high standards of financial reporting and to its ongoing efforts to improve its financial performance. The document is a valuable asset for the organization and should be kept in a secure location. It is a record of the organization's financial history and should be used as a guide for future operations. The document is a key component of the organization's financial reporting process and is essential for ensuring transparency and accountability. It is a testament to the organization's commitment to high standards of financial reporting and to its ongoing efforts to improve its financial performance.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

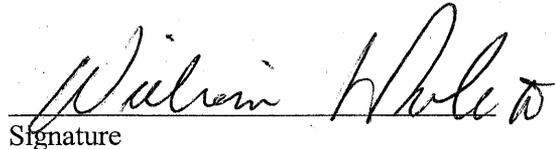
Date 10/5/07

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, 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:

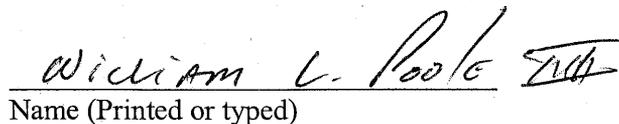
- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office 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

Date 8/08/07



Name (Printed or typed)

Title VP/GM

Authorized Representative of
Cemex Construction Materials, L.P.

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

