

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NUMBER: 2005-1967-AIR-E TCEQ ID NO.: RN102764867 CASE NO.: 27410**  
**RESPONDENT NAME: SOUTH-TEX CONCRETE, INC.**

**ORDER TYPE:**

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

**CASE TYPE:**

<input type="checkbox"/> AGRICULTURE	<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY		

**SITE WHERE VIOLATION(S) OCCURRED:** 2662 West Indiana, Brownsville, Cameron County

**TYPE OF OPERATION:** Concrete batch plant

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on September 11, 2006. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Robert R. Mosley, Litigation Division, MC 175, (512) 239-0627; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  
**TCEQ Enforcement Coordinator:** Ms. Rebecca Johnson, Enforcement Division, Section III, MC R-12, (713) 422-8931  
**TCEQ Regional Contact:** Ms. Lorinda Gardner, Harlingen Regional Office, MC R-15, (956) 430-6023  
**Respondent:** Mr. Federico Palacios, Registered Agent, South-Tex Concrete, Inc., 1420 S. 28th Street, Edinburg, Texas 78539  
**Respondent's Attorney:** Not represented by counsel.

CHIEF CLERKS OFFICE  
2007 APR 17 11 4: 33  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**RESPONDENT'S NAME: SOUTH-TEX CONCRETE, INC.  
DOCKET NO.: 2005-1967-AIR-E**

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: September 27, 2005</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: November 9, 2005 (NOE)</p> <p><b>Background Facts:</b></p> <p>An EDRP was filed on May 1, 2006. A settlement agreement was reached with the Respondent and a signed Agreed Order was received on June 2, 2006.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>AIR:</b></p> <p>1. Failed to comply with the permitted maximum annual concrete production limit of 15,000 cubic yards per year by producing 67,346.25 cubic yards in 2003, 79,474.50 cubic yards in 2004 and 53,064.75 cubic yards as of August 2005 [30 TEX. ADMIN. CODE §§ 116.115(c) and 116.116(b)(1)(C), TCEQ Air Permit No. 8371, Special Condition No. 1 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2. Failed to ensure that all in-plant roads are paved [30 TEX. ADMIN. CODE § 116.115(c), TCEQ Air Permit No. 8371, Special Condition No. 2.A. and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>3. Failed to provide a mechanism in the cement silo to warn operators that the silo was full so that it did not become overloaded at any time [30 TEX. ADMIN. CODE § 116.115(c), TCEQ Air Permit No. 8371, Special Condition No. 2.C. and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>4. Failed to maintain records to demonstrate compliance with permit requirements [30 TEX. ADMIN. CODE § 116.115(b)(2)(E), TCEQ Air Permit No. 8371, Special Condition No. 2.B. and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$10,500</p> <p>Total Deferred: \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Paid/Due to General Revenue: \$315/\$10,185</p> <p>The Respondent has paid \$315 of the administrative penalty. The remaining amount of \$10,185 of the administrative penalty shall be payable in 35 monthly payments of \$291 each.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <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><b>Ordering Provision(s)</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Within 10 days:</p> <p>a. Begin operating the plant in compliance with the permitted maximum annual concrete production limit of 15,000 cubic yards per year;</p> <p>b. Begin maintaining records to demonstrate compliance with required maintenance requirements; and</p> <p>c. Install a mechanism in the cement silo for warning operators that the silo is full.</p> <p>2. Within 25 days, submit written certification of compliance with Ordering Provision No. 1.</p> <p>3. Within 90 days, ensure that all in-plant roads are paved.</p> <p>4. Within 115 days, submit written certification of compliance with Ordering Provision No. 3.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

<b>DATES</b>	Assigned	14-Nov-2005			
	PCW	10-Mar-2006	Screening	28-Nov-2005	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	South-Tex Concrete, Inc.
Reg. Ent. Ref. No.	RN102764867
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	27410	No. of Violations	4
Docket No.	2005-1967-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Rebecca Johnson
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	<b>\$10,000</b>
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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	5% Enhancement	<i>Subtotals 2, 3, &amp; 7</i>	<b>\$500</b>
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Notes: Penalty enhancement due to one same or similar Notice of Violation.

Culpability	No	0% Enhancement	<i>Subtotal 4</i>	<b>\$0</b>
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Notes: The respondent does not meet the culpability criteria.

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

Notes: The respondent has not returned to compliance.

Economic Benefit	0% Enhancement*	<i>Subtotal 6</i>	<b>\$0</b>
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Total EB Amounts	\$14,733	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$59,000	

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	<b>\$10,500</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<i>Adjustment</i>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<b>Final Penalty Amount</b>	<b>\$10,500</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	<b>\$10,500</b>
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<b>DEFERRAL</b>	<i>Adjustment</i>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended since this is not an expedited enforcement action.

<b>PAYABLE PENALTY</b>	<b>\$10,500</b>
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<b>Screening Date</b>	28-Nov-2005	<b>Docket No.</b>	2005-1967-AIR-E	<b>PCW</b>
<b>Respondent</b>	South-Tex Concrete, Inc.	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	27410	PCW Revision May 19, 2005		
<b>Reg. Ent. Reference No.</b>	RN102764867			
<b>Media [Statute]</b>	Air Quality			
<b>Enf. Coordinator</b>	Rebecca Johnson			

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
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)**

**>> Repeat Violator (Subtotal 3)**

**Adjustment Percentage (Subtotal 3)**

**>> Compliance History Person Classification (Subtotal 7)**

**Adjustment Percentage (Subtotal 7)**

**>> Compliance History Summary**

**Compliance History Notes**

**Total Adjustment Percentage (Subtotals 2, 3, & 7)**

<b>Screening Date</b>	28-Nov-2005	<b>Docket No.</b>	2005-1967-AIR-E	<b>PCW</b>
<b>Respondent</b>	South-Tex Concrete, Inc.	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	27410	PCW Revision May 19, 2005		
<b>Reg. Ent. Reference No.</b>	RN102764867			
<b>Media [Statute]</b>	Air Quality			
<b>Enf. Coordinator</b>	Rebecca Johnson			

<b>Violation Number</b>	<input type="text" value="1"/>
<b>Primary Rule Cite(s)</b>	Air Permit No. 8371, Special Condition No. 1 and 30 Tex. Admin. Code § 116.116(b)(1)(C)
<b>Secondary Rule Cite(s)</b>	30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b)
<b>Violation Description</b>	Failure to comply with the permitted maximum annual concrete production limit of 15,000 cubic yards per year. Specifically, concrete production was 67,346.25 cubic yards in 2003, 79,474.50 cubic yards in 2004, and 53,064.75 cubic yards as of August 2005.

**Base Penalty**

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>

**Matrix Notes** Human health or the environment could be exposed to significant amounts of pollutants which would not exceed exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input checked="" type="text" value="x"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Three annual events are recommended based on the maximum annual production limit that was exceeded in 2003, 2004, and 2005.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$14,288"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$3,150"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$3,150"/>	

### Economic Benefit Worksheet

Respondent South-Tex Concrete, Inc.  
 Case ID No. 27410  
 Reg. Ent. Reference No. RN102764867  
 Media [Statute] Air Quality  
 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
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$50,000	01-Jan-2003	30-Jan-2007	4.1	\$680	\$13,607	\$14,288
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
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 obtain a permit amendment to increase the permitted annual concrete production limit and install additional pollution control devices. Date required based on the beginning of the first year in which the permitted annual concrete production limit was exceeded. Final date based 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:

Approx. Cost of Compliance \$50,000 TOTAL \$14,288

<b>Screening Date</b>	28-Nov-2005	<b>Docket No.</b>	2005-1967-AIR-E	<b>PCW</b>
<b>Respondent</b>	South-Tex Concrete, Inc.	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	27410	<i>PCW Revision May 19, 2005</i>		
<b>Reg. Ent. Reference No.</b>	RN102764867			
<b>Media [Statute]</b>	Air Quality			
<b>Enf. Coordinator</b>	Rebecca Johnson			
<b>Violation Number</b>	<input type="text" value="2"/>			
<b>Primary Rule Cite(s)</b>	Air Permit No. 8371, Special Condition No. 2.A.			
<b>Secondary Rule Cite(s)</b>	30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b)			
<b>Violation Description</b>	Failure to ensure that all in-plant roads are paved. Specifically, during the September 27, 2005 investigation in-plant roads without pavement were documented and dust clouds were observed when trucks drove on the roads.			
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>

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

		Harm				
Release		Major	Moderate	Minor		
OR	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor		
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent	<input type="text"/>

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

One quarterly event is recommended based on the September 27, 2005 investigation date to the November 28, 2005 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$270"/>	Violation Final Penalty Total <input type="text" value="\$1,050"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,050"/>	

### Economic Benefit Worksheet

Respondent: South-Tex Concrete, Inc.  
 Case ID No: 27410  
 Reg. Ent. Reference No: RN102764867  
 Media [Statute]: Air Quality  
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$5,000	27-Sep-2005	06-Jul-2006	0.8	\$13	\$258	\$270
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
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 pave all in-plant roads. Date required based on the investigation date. Final date based 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:

Approx. Cost of Compliance \$5,000 **TOTAL** \$270

<b>Screening Date</b>	28-Nov-2005	<b>Docket No.</b>	2005-1967-AIR-E	<b>PCW</b>
<b>Respondent</b>	South-Tex Concrete, Inc.		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	27410		PCW Revision May 19, 2005	
<b>Reg. Ent. Reference No.</b>	RN102764867			
<b>Media [Statute]</b>	Air Quality			
<b>Enf. Coordinator</b>	Rebecca Johnson			
<b>Violation Number</b>	3			
<b>Primary Rule Cite(s)</b>	Air Permit No. 8371, Special Condition No. 2.C.			
<b>Secondary Rule Cite(s)</b>	30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b)			
<b>Violation Description</b>	Failure to provide a mechanism in the cement silo for warning operators that the silo is full so that it is not overloaded at any time. Specifically, during the September 27, 2005 investigation plant personnel stated that no such mechanism was installed in the cement silo and visual observation confirmed that no lights or speaker horns were installed.			

**Base Penalty**

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input checked="" type="checkbox"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input type="text"/>

**Violation Base Penalty**

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

**Estimated EB Amount**

**Violation Final Penalty Total**

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

### Economic Benefit Worksheet

Respondent: South-Tex Concrete, Inc.  
 Case ID No. 27410  
 Reg. Ent. Reference No. RN102764867  
 Media [Statute] Air Quality  
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment	\$3,000	27-Sep-2005	06-Jun-2006	0.7	\$7	\$138	\$145
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				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
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 provide a mechanism in the cement silo for warning operators that the silo is full. Date required based on the investigation date. Final date based 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

Approx. Cost of Compliance \$3,000

**TOTAL** \$145

<b>Screening Date</b>	28-Nov-2005	<b>Docket No.</b>	2005-1967-AIR-E	<b>PCW</b>
<b>Respondent</b>	South-Tex Concrete, Inc.	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	27410	PCW Revision May 19, 2005		
<b>Reg. Ent. Reference No.</b>	RN102764867			
<b>Media [Statute]</b>	Air Quality			
<b>Enf. Coordinator</b>	Rebecca Johnson			

<b>Violation Number</b>	<input type="text" value="4"/>
<b>Primary Rule Cite(s)</b>	Air Permit No. 8371, Special Condition No. 2.B. and 30 Tex. Admin. Code § 116.115(b)(2)(E)
<b>Secondary Rule Cite(s)</b>	Tex. Health & Safety Code § 382.085(b)
<b>Violation Description</b>	Failure to maintain records to demonstrate compliance with permit requirements. Specifically, at the time of the September 27, 2005 investigation, records to demonstrate compliance with plant maintenance requirements were not being maintained.
<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

**Violation Base Penalty**

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$30"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,050"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,050"/>	

### Economic Benefit Worksheet

Respondent South-Tex Concrete, Inc.  
 Case ID No. 27410  
 Reg. Ent. Reference No. RN102764867  
 Media [Statute] Air Quality  
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime 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	\$1,000	27-Sep-2005	06-May-2006	0.6	\$30	n/a	\$30
Training/Sampling				0.0	\$0	n/a	\$0
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 develop a record keeping system to demonstrate compliance with plant maintenance requirements. Date required based on the investigation date. Final date based 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

Approx. Cost of Compliance \$1,000

**TOTAL** \$30

# Compliance History

Customer/Respondent/Owner-Operator: CN600516702 SOUTH-TEX CONCRETE, INC. Classification: AVERAGE Rating: 2.740  
Regulated Entity: RN102764867 SOUTH TEX CONCRETE CO Classification: AVERAGE Site Rating: 2.143  
ID Number(s):  
AIR NEW SOURCE PERMITS ACCOUNT NUMBER 908371F  
AIR NEW SOURCE PERMITS PERMIT 8371  
Location: 2662 West Indiana, Brownsville, Texas 78521 Rating Date: 9/1/05 Repeat Violator: NO  
TCEQ Region: REGION 15 - HARLINGEN  
Date Compliance History Prepared: November 21, 2005  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: November 20, 2000 to November 20, 2005  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Rebecca Johnson Phone: (713) 422-8931

## 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? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## 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	09/30/2004	(291876)
2	08/19/2005	(405894)
3	06/30/2005	(397810)
4	08/16/2005	(402827)
5	06/07/2001	(95181)
6	11/08/2005	(431570)
7	04/20/2005	(378092)
8	04/18/2005	(377282)
9	06/30/2005	(397378)
10	03/03/2005	(372743)
11	08/19/2005	(400320)
12	10/27/2004	(337208)
13	12/16/2004	(344258)

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

Date: 10/01/2004 (291876)

Self Report? NO

Classification: Moderate

Citation:

30 TAC Chapter 101, SubChapter A 101.4

Description: Failure to control the dust from leaving the South Texas Concrete's property.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
SOUTH-TEX CONCRETE, INC.;  
RN102764867

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2005-1967-AIR-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding South-Tex Concrete, Inc. ("South-Tex") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and South-Tex, appear before the Commission and together stipulate that:

1. South-Tex owns and operates a concrete batch plant located at 2662 West Indiana, Brownsville, Cameron County, Texas (the "Plant").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and South-Tex agree that the Commission has jurisdiction to enter this Agreed Order, and that South-Tex is subject to the Commission's jurisdiction.
4. South-Tex received notice of the violations alleged in Section II ("Allegations") on or about November 14, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by South-Tex of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of ten thousand five hundred dollars (\$10,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). South-Tex has paid three hundred fifteen dollars (\$315.00) of the administrative penalty. The remaining amount of ten thousand one hundred eighty-five

dollars (\$10,185.00) of the administrative penalty shall be payable in thirty-five monthly payments of two hundred ninety-one dollars (\$291.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If South-Tex fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of South-Tex to meet the payment schedule of this Agreed Order constitutes the failure by South-Tex to timely and satisfactorily comply with all of the terms of this Agreed Order.

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 South-Tex 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 South-Tex 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

South-Tex is alleged to have violated:

1. 30 TEX. ADMIN. CODE §§ 116.115(c) and 116.116(b)(1)(C); TCEQ Air Permit No. 8371, Special Condition No. 1; and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with the permitted maximum annual concrete production limit of 15,000 cubic yards per year by producing 67,346.25 cubic yards in 2003, 79,474.50 cubic yards in 2004 and 53,064.75 cubic yards as of August 2005 as documented on during an investigation conducted on September 27, 2005.

2. 30 TEX. ADMIN. CODE § 116.115(c); TCEQ Air Permit No. 8371, Special Condition No. 2.A.; and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to ensure that all in-plant roads are paved as documented on during an investigation conducted on September 27, 2005.
3. 30 TEX. ADMIN. CODE § 116.115(c); TCEQ Air Permit No. 8371, Special Condition No. 2.C.; and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to provide a mechanism in the cement silo to warn operators that the silo was full so that it did not become overloaded at any time as documented on during an investigation conducted on September 27, 2005.
4. 30 TEX. ADMIN. CODE § 116.115(b)(2)(E); TCEQ Air Permit No. 8371, Special Condition No. 2.B.; and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain records to demonstrate compliance with permit requirements as documented on during an investigation conducted on September 27, 2005.

### III. DENIALS

South-Tex generally denies each allegation in Section II (“Allegations”).

### IV. ORDER

1. It is, therefore, ordered by the TCEQ that South-Tex pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and South-Tex’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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: South-Tex Concrete, Inc., Docket No. 2005-1967-AIR-E” to:

Financial Administration Division, Revenues Section  
Attention: Cashier’s Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

2. South-Tex shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Agreed Order, South-Texas shall:
    - i. Begin operating the plant in compliance with the permitted maximum annual concrete production limit of 15,000 cubic yards per year;

- ii. Begin maintaining records to demonstrate compliance with required maintenance requirements, as required by 30 TEX. ADMIN. CODE § 116.115(b)(2)(E); and
  - iii. Install a mechanism in the cement silo for warning operators that the silo is full, as required by Air Permit No. 8371, Special Condition No. 2.C.
- b. Within 25 days after the effective date of this Agreed Order, South-Tex shall submit written certification of compliance with Ordering Provision 2.a.i. through 2.a.iii., as described in Ordering Provision 2.e.
  - c. Within 90 days after the effective date of this Agreed Order, South-Tex shall ensure that all in-plant roads are paved, as required by Air Permit No. 8371, Special Condition No. 2.A.
  - d. Within 115 days after the effective date of this Agreed Order, South-Tex shall submit written certification of Ordering Provision 2.c. as described in Ordering Provision 2.e.
  - e. The certification required by Ordering Provisions 2.b. and 2.d. shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of 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

With a copy to:

Air Section Manager  
Texas Commission on Environmental Quality  
Harlingen Regional Office  
1804 West Jefferson Avenue  
Harlingen, Texas 78550

3. The provisions of this Agreed Order shall apply to and be binding upon South-Tex. South-Tex 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 South-Tex 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, South-Tex's failure to comply is not a violation of this Agreed Order. South-Tex shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. South-Tex all notify the Executive Director within seven days after South-Tex 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 South-Tex shall be made in writing to the Executive Director. Extensions are not effective until South-Tex 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 South-Tex 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to South-Tex, or three days after the date on which the Commission mails notice of the Order to South-Tex, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*[Handwritten Signature]*  
For the Executive Director

08/28/06  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*[Handwritten Signature]*  
Signature

05/31/06  
Date

AL LONGORIA  
Name (Printed or typed)  
Authorized representative of  
South-Tex Concrete, Inc.

Office Manager  
Title