

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2005-0869-WQ-E TCEQ ID: RN100802206 CASE NO.: 25924**

**RESPONDENT NAME: LUTENBAKER-COLEMAN, LTD. DBA SANDY HILL CONCRETE FKA SANDY HILL REDI-MIX, INC.**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input 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 checked="" 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

**SITE WHERE VIOLATION(S) OCCURRED:** 3812 US Highway 287 South, Wise County

**TYPE OF OPERATION:** Ready-mixed concrete facility

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints.

**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 November 3, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Ms. Merrilee Hupp, Water Enforcement Section, MC 169, (512) 239-4490

**TCEQ Regional Contact:** Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901

**Respondent:** Mr. Rusty Lee Coleman, General Partner, Lutembaker-Coleman, Ltd., 3812 US Highway 287 South, Decatur, Texas 76234

**Respondent's Attorney:** Ms. Ragna Henrichs, Partner, Porter & Hedges, L.L.P., 1000 Main Street, 36<sup>th</sup> Floor, Houston, Texas 77002

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 7, 2005</p> <p><b>Date of NOE Relating to this Case:</b> April 7, 2005</p> <p><b>Background Facts:</b> The EDPRP was filed on November 16, 2005. The Respondent filed an answer on December 7, 2005, and the case was referred to SOAH. The Respondent signed an Agreed Order and paid the penalty on July 30, 2008.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>WQ:</b></p> <ol style="list-style-type: none"> <li>1. Failing to comply with the permitted total suspended solids daily maximum limitation of 65 milligrams per liter ("mg/L") during February 2004, and October 2004 [TEX WATER CODE § 26.121(a); 30 TEX. ADMIN. CODE § 305.125(1); and General Permit No. TXG110311, Part 1, Section C, General Permit Limits].</li> <li>2. Failing to comply with the 15-minute maximum hold time to analyze for pH during February 2004 and October 2004 [30 TEX. ADMIN. CODE § 305.125(1); and General Permit No. TXG110311, Part II, Section C.5., Monitoring Procedures].</li> <li>3. Failing to sample and analyze storm and waste water discharges in accordance with permit requirements [30 TEX. ADMIN. CODE § 305.125(1); and General Permit No. TXG110311, Part II, Section C.2., Representative Sampling].</li> <li>4. Failing to meet the minimum requirements of the Pollution Prevention Plan by not including a narrative description of the activity that is a storage practice for the solid waste dredged from the washout pits, not identifying the stored dredged material from the washout pits on the site map, and not developing and implementing measures or controls which address the storage activity of the dredged solids from the washout pits [30 TEX. ADMIN. CODE § 305.125(1); and General Permit No. TXG110311, Part I, Section E, Pollution Prevention Plan].</li> </ol>	<p><b>Total Assessed:</b> \$5,945</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$5,945</p> <p>The Respondent has paid the assessed penalty in full.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Technical Requirements</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, begin sampling in accordance with the General Permit.</li> <li>2. Within 30 days, submit to the TCEQ, Dallas/Fort Worth Regional Office, a narrative description of the activity that is a storage practice for the solid waste dredged from the washout pits, a site map which identifies the stored dredged material from the washout pits, and develop and implement measures or controls which address the storage activity of the dredged solids from the washout pits.</li> <li>3. Within 45 days, achieve compliance with the permitted effluent limits contained in the General Permit.</li> <li>4. Within 60 days, submit written certification to demonstrate compliance with these Ordering Provisions.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

<b>DATES</b>	Assigned	09-May-2005	Screening	24-May-2005	EPA Due	08-Jul-2005
	PCW	10-Jul-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Sandy Hill Redi-Mix, Inc.
Reg. Ent. Ref. No.	RN100802206
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	25924	No. of Violations	3
Docket No.	2005-0869-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Merrilee Hupp
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1

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

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

**Compliance History**  Subtotals 2, 3, & 7

Notes

**Culpability**   Subtotal 4

Notes

**Good Faith Effort to Comply**  Subtotal 5

Before NOV    NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/> *	(mark with a small x)

Notes

**Economic Benefit**  Subtotal 6

Total EB Amounts  *\*Capped at the Total EB \$ Amount*

Approx. Cost of Compliance

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  Reduction Adjustment

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

**Screening Date** 24-May-2005 **Docket No.** 2005-0869-WQ-E **PCW**  
**Respondent** Sandy Hill Redi-Mix, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 25924 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN100802206  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Merrilee Hupp

**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> )	9	45%
	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%
Other	<i>Please Enter Yes or No</i>		
	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)**

**Screening Date** 24-May-2005

**Docket No.** 2005-0869-WQ-E

**PCW**

**Respondent** Sandy Hill Redi-Mix, Inc.

*Policy Revision 2 (September 2002)*

**Case ID No.** 25924

*PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN100802206

**Media [Statute]** Water Quality

**Enf. Coordinator** Merrilee Hupp

**Violation Number**

**Primary Rule Cite(s)**

**Secondary Rule Cite(s)**

**Violation Description**

Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1) and General Permit No. TXG110311, Part I, Section C, General Permit Limits and Part II, Section C.5., Monitoring Procedures

Noncompliance with the permitted total suspended solids daily maximum limitation of 65 milligrams per liter ("mg/L") during February 2004 (381 mg/L) and October 2004 (131 mg/L). In addition, exceeding the 15-minute maximum hold time to analyze for pH during February and October 2004.

**Base Penalty**

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

		Harm		
Release		Major	Moderate	Minor
OR	Actual			X
	Potential			

**Percent**

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

**Percent**

**Matrix Notes**

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

**Violation Base Penalty**

Two quarterly events are recommended for the noncompliances during February and October 2004.

**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 Sandy Hill Redi-Mix, Inc.  
 Case ID No. 25924  
 Reg. Ent. Reference No. RN100802206  
 Media [Statute] Water 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$2,500	01-Feb-2004	01-May-2006	2.2	\$19	\$374	\$393
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 associated with additional oversight and sampling which may have prevented or alleviated the noncompliances, and purchase of a hand held meter. Date Required is the first month of noncompliance. Final Date is the anticipated date of compliance.

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 **\$2,500**

**TOTAL \$393**

Screening Date 24-May-2005

Docket No. 2005-0869-WQ-E

PCW

Respondent Sandy Hill Redi-Mix, Inc.

Policy Revision 2 (September 2002)

Case ID No. 25924

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100802206

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number

30 Tex. Admin. Code § 305.125(1), and General Permit No. TXG110311, Part II, Section C.2., Representative Sampling

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failure to sample and analyze storm and wastewater discharges in accordance with permit requirements during January, March, November, and December 2004.

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="5%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

>> Programmatic Matrix

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

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed protective levels as the result of failing to sample and monitor.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

Four single events are recommended.

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 Sandy Hill Redi-Mix, Inc.  
 Case ID No. 25924  
 Reg. Ent. Reference No. RN100802206  
 Media [Statute] Water Quality  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Percent Interest	Years of Depreciation
						Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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				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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Percent Interest	Years of Depreciation
						Onetime Costs	EB Amount
<b>Avoided Costs</b>							
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	\$500	01-Jan-2004	31-Dec-2005	2.0	\$50	\$1,000	\$1,050
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

Estimated cost associated with proper sampling.

Approx. Cost of Compliance **\$500**

**TOTAL \$1,050**

Screening Date 24-May-2005

Docket No. 2005-0869-WQ-E

PCW

Respondent Sandy Hill Redi-Mix, Inc.

Policy Revision 2 (September 2002)

Case ID No. 25924

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100802206

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number

Primary Rule Cite(s)

30 Tex. Admin. Code § 305.125(1), and General Permit No. TXG110311, Part I, Section E, Pollution Prevention Plan

Secondary Rule Cite(s)

Violation Description

Failure to meet the minimum requirements of the Pollution Prevention Plan. Specifically, failure to include a narrative description of the activity that is a storage practice for the solid waste dredged from the washout pits; failure to identify the stored dredged material from the washout pits on the site map; and failure to develop and implement measures or controls which address the storage activity of the dredged solids from the washout pits.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

70% of the requirement was met.

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

One single event is recommended.

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 Sandy Hill Redi-Mix, Inc.  
 Case ID No. 25924  
 Reg. Ent. Reference No. RN100802206  
 Media [Statute] Water 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$500	07-Jan-2005	01-May-2006	1.3	\$2	\$44	\$46
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 update the pollution prevention plan. Date Required is the date of the investigation. Final Date is the anticipated date of compliance.

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 **\$500**

**TOTAL \$46**

# Compliance History

Customer/Respondent/Owner-Operator: CN600487615 Lutenbaker-Coleman, Ltd. Classification: AVERAGE Rating: 2.370

Regulated Entity: RN100802206 SANDY HILL REDI-MIX INC Classification: AVERAGE Site Rating: 1.11  
ID Number(s):

WASTE WATER GENERAL PERMIT PERMIT TXG110311  
PETROLEUM STORAGE TANK REGISTRATION 77139  
REGISTRATION  
AIR NEW SOURCE PERMITS ACCOUNT NUMBER WN0204T

Location: 3812 S HIGHWAY 287, WISE COUNTY Rating Date: 9/1/04 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: May 12, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 12, 2000 to May 12, 2005

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

Name: Laurie Eaves Phone: 512/239-4495

## 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.)

2 05/03/2004 (369799)  
4 05/03/2004 (369800)  
6 07/22/2004 (369801)  
8 07/22/2004 (369802)  
10 07/22/2004 (369803)  
12 07/24/2002 (244262)  
14 03/12/2002 (244263)  
16 04/21/2003 (244264)  
18 04/21/2003 (244265)  
20 07/24/2002 (244266)  
22 03/12/2002 (244267)  
24 03/12/2002 (244268)  
26 03/12/2002 (244269)  
28 03/13/2002 (244270)  
30 07/25/2003 (331834)  
32 07/25/2003 (331835)  
34 07/25/2003 (331836)  
36 10/21/2003 (331837)  
38 10/21/2003 (331838)  
40 10/21/2003 (331839)

42 01/26/2004 (331840)  
44 01/26/2004 (331841)  
46 01/26/2004 (331842)

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

Date: 01/30/2002 (244262)  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

Date: 01/31/2002 (244263)  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

Date: 02/28/2003 (244265)  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

Date: 04/30/2002 (244266)  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

Date: 04/30/2003 (331834)  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

Date: 06/30/2003 (331836)  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

Date: 09/30/2003 (331839)  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

Date: 02/28/2004  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

Date: 10/31/2004  
Self Report? YES  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Classification: Moderate

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  
LUTENBAKER-COLEMAN, LTD.  
DBA SANDY HILL CONCRETE  
FKA SANDY HILL REDI-MIX,  
INC., RN100802206

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2005-0869-WQ-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 Lutemaker-Coleman, Ltd. dba Sandy Hill Concrete fka Sandy Hill Redi-Mix, Inc. ("Sandy Hill") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Sandy Hill represented by Ms. Ragna Henrichs of the law firm of Porter and Hedges, L.L.P., appear before the Commission and together stipulate that:

1. Sandy Hill owns and operates a ready-mixed concrete facility located at 3812 US Highway 287 South, Wise County, Texas (the "Facility").
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. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Sandy Hill agree that the Commission has jurisdiction to enter this Agreed Order, and that Sandy Hill is subject to the Commission's jurisdiction.
4. Sandy Hill received notice of the violations alleged in Section II ("Allegations") on or about April 12, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Sandy Hill of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of five thousand nine hundred forty-five dollars (\$5,945.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Sandy Hill has paid five thousand nine hundred forty-five dollars (\$5,945.00) of the administrative 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 Sandy Hill 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 Sandy Hill 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

Sandy Hill is alleged to have violated:

1. TEX. WATER CODE § 26.121(a); 30 TEX. ADMIN. CODE § 305.125(1); and General Permit No. TXG110311, Part I, Section C, General Permit Limits by failing to comply with the permitted total suspended solids daily maximum limitation of 65 milligrams per liter ("mg/L") during February 2004 and October 2004 as documented on January 7, 2005.
2. 30 TEX. ADMIN. CODE § 305.125(1) and General Permit No. TXG110311, Part II, Section C.5., Monitoring Procedures by failing to comply with the 15-minute maximum hold time to analyze for pH during February 2004 and October 2004 as documented on January 7, 2005.
3. 30 TEX. ADMIN. CODE § 305.125(1) and General Permit No. TXG110311, Part II, Section C.2., Representative Sampling by failing to sample and analyze storm and waste water discharges in accordance with permit requirements during January, March, November, and December 2004 as documented on January 7, 2005.

4. 30 TEX. ADMIN. CODE § 305.125(1) and General Permit No. TXG110311, Part I, Section E, Pollution Prevention Plan by failing to meet the minimum requirements of the Pollution Prevention Plan by not including a narrative description of the activity that is a storage practice for the solid waste dredged from the washout pits, not identifying the stored dredged material from the washout pits on the site map, and not developing and implementing measures or controls which address the storage activity of the dredged solids from the washout pits as documented on January 7, 2005.

### III. DENIALS

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

### IV. ORDER

1. It is, therefore, ordered by the TCEQ that Sandy Hill pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Sandy Hill'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: Lutenbaker-Coleman, Ltd. dba Sandy Hill Concrete fka Sandy Hill Redi-Mix, Inc., Docket No. 2005-0869-WQ-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. Sandy Hill shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Sandy Hill shall begin sampling in accordance with General Permit No. TXG110311, Part II, Section C.5., Monitoring Procedures;
  - b. Within 30 days after the effective date of this Agreed Order, Sandy Hill shall submit to the TCEQ, Dallas/Fort Worth Regional Office, a narrative description of the activity that is a storage practice for the solid waste dredged from the washout pits, a site map which identifies the stored dredged material from the washout pits, and

develop and implement measures or controls which address the storage activity of the dredged solids from the washout pits;

- c. Within 45 days after the effective date of this Agreed Order, Sandy Hill shall achieve compliance with the permitted effluent limits contained in General Permit No. TXG110311, Part I, Section C, General Permit Limits; and
- d. Within 60 days after the effective date of this Agreed Order, Sandy Hill shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c.

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 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

and

Mr. Sid Slocum, Water Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

- 3. The provisions of this Agreed Order shall apply to and be binding upon Sandy Hill. Sandy Hill is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If Sandy Hill 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, Sandy Hill's failure to comply is not a violation of this Agreed Order. Sandy Hill shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Sandy Hill shall notify the Executive Director within seven days after Sandy Hill 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 Sandy Hill shall be made in writing to the Executive Director. Extensions are not effective until Sandy Hill 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 Sandy Hill 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 Sandy Hill, or three days after the date on which the Commission mails notice of the Order to Sandy Hill, 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

  
\_\_\_\_\_  
For the Executive Director

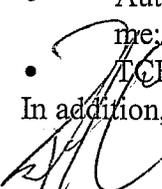
10/16/08  
Date

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.

  
\_\_\_\_\_  
Signature

7-30-08  
Date

Rusty Coleman  
Name (Printed or typed)

Owner  
Title

Authorized representative of  
Lutenbaker-Coleman, Ltd. dba Sandy Hill  
Concrete fka Sandy Hill Redi-Mix, Inc.