EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1001-AIR-E **TCEQ ID:** RN100225184 **CASE NO.:** 36091

RESPONDENT NAME: Acme Brick Company

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Acme Brick Bennett Plant, 2350 Bennett Road, Millsap, Parker County

TYPE OF OPERATION: Brick manufacturing plant

SMALL BUSINESS: ___ Yes X No

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

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 24, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Terry Murphy, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-5025; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Jason Pence, Environmental Manager, Acme Brick Company, 2350 Bennett Road, Millsap, Texas 76066
Mr. Gregg Sublett, Regional Production Manager, Acme Brick Company, 2350 Bennett Road, Millsap, Texas 76066
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** March 17, 2008 **Date of NOV/NOE Relating to this Case:** April 8, 2008 (NOE) **Background Facts:** This was a record review. **AIR** Failure to submit a semiannual deviation report. Specifically, the Respondent did not submit a deviation report for the February 6 to August 5, 2007 reporting period when deviations were known to have occurred [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. O-01597 General Terms and Conditions].	**Total Assessed:** $2,925 **Total Deferred:** $585 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $2,340 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** _X_ Yes __ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent submitted the deviation report for the February 6 to August 5, 2007 reporting period on April 1, 2008.

Additional ID No(s).: Air Account No. PC0001E

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision April 29, 2008*

TCEQ

DATES					
Assigned	2-Jun-2008				
PCW	24-Jun-2008	Screening	20-Jun-2008	EPA Due	17-Feb-2009

RESPONDENT/FACILITY INFORMATION

Respondent	Acme Brick Company		
Reg. Ent. Ref. No.	RN100225184		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	36091	No. of Violations	1
Docket No.	2008-1001-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Terry Murphy
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* **$2,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 42.0% Enhancement — *Subtotals 2, 3, & 7* **$1,050**

Notes: The Respondent has received two 1660 Orders and one NOV for non-similar violations in the past five years.

Culpability — No — 0.0% Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 25.0% Reduction — *Subtotal 5* **$625**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes: The Respondent achieved compliance on April 1, 2008.

0.0% Enhancement* — *Subtotal 6* **$0**

Total EB Amounts	$29
Approx. Cost of Compliance	$1,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$2,925**

OTHER FACTORS AS JUSTICE MAY REQUIRE — 0.0% — *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$2,925**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$2,925**

DEFERRAL — 20.0% Reduction — *Adjustment* **-$585**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$2,340**

Screening Date 20-Jun-2008 **Docket No.** 2008-1001-AIR-E **PCW**

Respondent Acme Brick Company *Policy Revision 2 (September 2002)*

Case ID No. 36091 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN100225184

Media [Statute] Air

Enf. Coordinator Terry Murphy

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	2	40%
	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 judgements 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) 42%

>> 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

The Respondent has received two 1660 Orders and one NOV for non-similar violations in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 42%

Screening Date 20-Jun-2008 **Docket No.** 2008-1001-AIR-E **PCW**

Respondent Acme Brick Company *Policy Revision 2 (September 2002)*

Case ID No. 36091 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN100225184

Media [Statute] Air

Enf. Coordinator Terry Murphy

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(B), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit No. O-01597 General Terms and Conditions

Violation Description Failed to submit a semiannual deviation report, as documented during a record review conducted on March 17, 2008. Specifically, the Respondent did not submit a deviation report for the February 6 to August 5, 2007 reporting period when deviations were known to have occurred.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 | 210 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $29

Statutory Limit Test

Violation Final Penalty Total $2,925

This violation Final Assessed Penalty (adjusted for limits) $2,925

Economic Benefit Worksheet

Respondent Acme Brick Company
Case ID No. 36091
Reg. Ent. Reference No. RN100225184
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System	$1,000	4-Sep-2007	1-Apr-2008	0.58	$29	n/a	$29
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to submit a semiannual deviation report. Date required is the date the report was due and final date is when compliance was achieved.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $1,000

TOTAL: $29

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600124549	Acme Brick Company	Classification: AVERAGE	Rating: 2.35
Regulated Entity:	RN100225184	ACME BRICK BENNETT PLANT	Classification: AVERAGE	Site Rating: 2.63

ID Number(s):

AIR OPERATING PERMITS	ACCOUNT NUMBER	PC0001E
AIR OPERATING PERMITS	PERMIT	1597
PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	12716
AIR NEW SOURCE PERMITS	PERMIT	25937
AIR NEW SOURCE PERMITS	PERMIT	41752
AIR NEW SOURCE PERMITS	PERMIT	47223
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	PC0001E
AIR NEW SOURCE PERMITS	AFS NUM	4836700006
AIR NEW SOURCE PERMITS	PERMIT	70950
STORMWATER	PERMIT	TXR05N880

Location: 2350 BENNETT RD, MILLSAP, TX, 76066 Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 12, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 12, 2003 to June 12, 2008

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

Name: Terry Murphy Phone: (512) 239-5025

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.

Effective Date: 05/23/2005 ADMINORDER 2003-1492-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: MAERT emission limits OP

Description: Failure to comply with Permit No. 25937 MAERT emission limits for SO2 and HCl. The exceedances were detected during a voluntary stack test conducted at the facility on 2/11/03.

Effective Date: 03/19/2007 ADMINORDER 2006-1751-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(B)

Rqmt Prov: Federal Operating Permit O-01597 OP

Description: Failure to submit a semi-annual deviation report in a timely manner, in violation of 30 TAC § 122.142(2)(B), Tex. Health and Safety Code § 382.085(b), and Federal Operating Permit No. O-01597. A deviation report was submitted on February 15, 2006.

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	06/13/2003	(366198)
2	06/24/2003	(20486)
3	07/15/2003	(366199)
4	08/08/2003	(146219)
5	08/19/2003	(366200)
6	08/28/2003	(148241)
7	09/12/2003	(366201)
8	10/14/2003	(366202)
9	11/18/2003	(366203)
10	02/19/2004	(261684)
11	05/26/2004	(272495)
12	05/26/2004	(272770)

13	06/14/2004	(274801)
14	08/12/2004	(288838)
15	06/29/2005	(394913)
16	08/12/2005	(398342)
17	10/24/2005	(433274)
18	04/06/2006	(460757)
19	08/31/2006	(480699)
20	10/09/2006	(515644)
21	10/09/2006	(515665)
22	01/25/2007	(535973)
23	02/14/2007	(539782)
24	03/15/2007	(543029)
25	05/23/2007	(560999)
26	04/08/2008	(639579)

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

Date: 09/08/2006 (489683)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT MSGP Part II-Section B(2)

Description: Failure to include a co-located industrial activity in the storm water pollution prevention plan.

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 NATURAL RESOURCE CONSERVATION COMMISSION

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
ACME BRICK COMPANY	§	
RN100225184	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1001-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 Acme Brick Company ("the Respondent") 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 the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a brick manufacturing plant located at 2350 Bennett Road in Millsap, Parker 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 the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 13, 2008.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Nine Hundred Twenty-Five Dollars ($2,925) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Three Hundred Forty Dollars ($2,340) of the administrative penalty and Five Hundred Eighty-Five Dollars ($585) is deferred contingent upon the Respondent'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 the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent submitted the deviation report for the February 6 to August 5, 2007 reporting period on April 1, 2008.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. 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.

12. 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, the Respondent is alleged to have failed to submit a semiannual deviation report, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. O-01597 General Terms and Conditions, as documented during a record review conducted on March 17, 2008. Specifically, the Respondent did not submit a deviation report for the February 6 to August 5, 2007 reporting period when deviations were known to have occurred.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: Acme Brick Company, Docket No. 2008-1001-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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.

3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this 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.

4. 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.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

John Sadler
For the Executive Director

10/30/2008
Date

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.

Gregg Sublett
Signature

8/8/08
Date

Gregg Sublett
Name (Printed or typed)
Authorized Representative of
Acme Brick Company

Regional Production Mgr
Title

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.