EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0805-AIR-E **TCEQ ID:** RN100788959 **CASE NO.:** 35904

RESPONDENT NAME: Building Materials Corporation of America

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: GAF Materials Corporation of America, 2600 Singleton Boulevard, Dallas, Dallas County

TYPE OF OPERATION: Asphalt felts and coatings 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 December 8, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2134; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Doug Harris, Plant Engineer, Building Materials Corporation of America, 2600 Singleton Boulevard, Dallas, Texas 75212
Mr. David Fuelleman, Plant Manager, Building Materials Corporation of America, 2600 Singleton Boulevard, Dallas, Texas 75212
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:** January 25, 2008 **Date of NOV/NOE Relating to this Case:** May 2, 2008 (NOE) **Background Facts:** This was a record review. **AIR** 1) Failure to comply with the permitted Maximum Allowable Emissions Rate Table ("MAERT") for the line 3 cooling section (emission point number ["EPN"] COOL3) as determined during stack testing. Specifically, at EPN COOL3, the permitted allowable hourly particulate matter ("PM") emission rate is 6.00 pounds per hour ("lbs/hr"), and during the stack test conducted on May 16 through May 27, 2005, the actual hourly PM emission rate was 29.84 lbs/hr [30 TEX. ADMIN. CODE § 116.115(b)(2)(F), Air Permit No. 7711A, Special Condition No. 1, and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failure to comply with the permitted MAERT for the thermal oxidizer stack ("EPN 8") as determined during stack testing. Specifically, at EPN 8, the permitted allowable hourly sulfur dioxide ("SO_2") emission rate is 0.73 lbs/hr, and during the stack test conducted on October 30 and 31, 2006, the actual hourly rate for SO_2 was 38.49 lbs/hr, the permitted allowable hourly oxides of nitrogen ("NOx") emission rate is 0.72 lbs/hr and the actual hourly rate for NOx was 2.15 lbs/hr, and the permitted allowable carbon monoxide ("CO") emission rate is 1.26 lbs/hr and the actual hourly rate for CO was 22.46 lbs/hr [30 TEX. ADMIN. CODE § 116.115(b)(2)(F), Air Permit No. 7711A,	**Total Assessed:** $50,925 **Total Deferred:** $10,185 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $20,370 **Total Paid to General Revenue:** $20,370 **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 conducted a stack test on the line no. 1 cooling section exhaust [a total of three stacks – EPN COOL1] on April 24, 2008. **Ordering Provisions:** 1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A) 2) The Order will also require the Respondent to: a. Within 60 days after the effective date of this Agreed Order, complete stack testing for EPN COOL3 for PM, and EPN 8 for SO_2, NOx, and CO; or b. Within 60 days after the effective date of this Agreed Order, submit an administratively complete permit amendment application to increase allowable emission limits for PM from EPN COOL3, and SO_2, NOx, and CO from EPN 8, and comply with any subsequently issued requirements and timelines for stack testing for PM from EPN COOL3 and for SO_2, NOx, and CO from EPN 8; c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing; and d. Within 240 days after the effective date of this Agreed Order, submit written certification of the results of the stack testing for EPN COOL3 for PM and EPN 8 for SO_2, NOx, and CO, or that either authorization to construct and operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance.

Special Condition No. 1, and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 3) Failure to conduct stack testing on EPN COOL1. Specifically, Special Condition No. 9 requires that it be sampled 180 days after the issuance of the permit dated October 21, 2004, which was no later than April 19, 2005 [30 TEX. ADMIN. CODE § 116.115(b)(2)(F), Air Permit No. 7711A, Special Condition No. 9, and TEX. HEALTH & SAFETY CODE § 382.085(b)].		

Additional ID No(s).: DB0378S

Attachment A
Docket Number: 2008-0805-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Building Materials Corporation of America**
Penalty Amount:	**Forty Thousand Seven Hundred Forty Dollars ($40,740)**
SEP Offset Amount:	**Twenty Thousand Three Hundred Seventy Dollars ($20,370)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Texas PTA – *Clean School Bus Program***
Location of SEP:	**Dallas County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to ***Texas PTA*** for the *Clean School Bus Program* in Dallas County as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to reimburse local school districts for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Texas Congress of Parents and Teachers dba Texas PTA
Clean School Bus Program
Suzy Swan, Director of Finance
408 West 11th Street
Austin, Texas 78707

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	5-May-2008				
PCW	26-Jan-2008	Screening	15-May-2008	EPA Due	27-Jan-2009

RESPONDENT/FACILITY INFORMATION

Respondent	Building Materials Corporation of America		
Reg. Ent. Ref. No.	RN100788959		
Facility/Site Region	4 - Dallas/Fort Worth	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	35904	No. of Violations	3
Docket No.	2008-0805-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Suzanne Walrath
Multi-Media		EC's Team	Enforcement Team 3
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $48,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 5.0% Enhancement — *Subtotals 2, 3, & 7* $2,425

Notes: The Respondent received one NOV with same or similar violations.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0.0% Reduction — *Subtotal 5* $0

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

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

0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts	$3,934
Approx. Cost of Compliance	$23,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $50,925

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $50,925

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $50,925

DEFERRAL — 20.0% Reduction — *Adjustment* -$10,185

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 $40,740

Screening Date 15-May-2008 **Docket No.** 2008-0805-AIR-E

PCW

Respondent Building Materials Corporation of America

Policy Revision 2 (September 2002)

Case ID No. 35904

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN100788959

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

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*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of 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) 5%

>> 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 received one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 15-May-2008 **Docket No.** 2008-0805-AIR-E **PCW**

Respondent Building Materials Corporation of America *Policy Revision 2 (September 2002)*

Case ID No. 35904 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN100788959

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.115(b)(2)(F), Air Permit No. 7711A, Special Condition No. 1, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the permitted Maximum Allowable Emissions Rate Table ("MAERT") for the line 3 cooling section (emission point number ["EPN"] COOL3) as determined during stack testing. Specifically, at EPN COOL3, the permitted allowable hourly particulate matter ("PM ") emission rate is 6.00 pounds per hour ("lbs/hr"), and during the stack test conducted on May 16 through May 27, 2005, the actual hourly PM emission rate was 29.84 lbs/hr.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 12 | 1095 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $30,000

Twelve quarterly events are recommended beginning on the date of the failed stack test (May 16, 2005) and ending on case screening date (May 15, 2008).

Economic Benefit (EB) for this violation

Estimated EB Amount $1,692

Statutory Limit Test

Violation Final Penalty Total $31,500

This violation Final Assessed Penalty (adjusted for limits) $31,500

Economic Benefit Worksheet

Respondent Building Materials Corporation of America
Case ID No. 35904
Reg. Ent. Reference No. RN100788959
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)	$6,500	16-May-2005	1-Feb-2009	3.72	$81	$1,611	$1,692
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
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: These are approximate costs for conducting a stack test and certifying compliance for EPN COOL3, beginning on the date of the failed stack test, and ending on the projected date of compliance.

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: $6,500

TOTAL: $1,692

Screening Date 15-May-2008 **Docket No.** 2008-0805-AIR-E **PCW**

Respondent Building Materials Corporation of America *Policy Revision 2 (September 2002)*

Case ID No. 35904 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN100788959

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 116.115(b)(2)(F), Air Permit No. 7711A, Special Condition No. 1, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the permitted MAERT for the thermal oxidizer stack ("EPN 8") as determined during stack testing. Specifically, at EPN 8, the permitted allowable hourly sulfur dioxide ("SO_2") emission rate is 0.73 lbs/hr, and during the stack test conducted on October 30 and 31, 2006, the actual hourly rate for SO_2 was 38.49 lbs/hr, the permitted allowable hourly oxides of nitrogen ("NOx") emission rate is 0.72 lbs/hr, and the actual hourly rate for NOx was 2.15 lbs/hr, and the permitted allowable carbon monoxide ("CO") emission rate is 1.26 lbs/hr and the actual hourly rate for CO was 22.46 lbs/hr.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 7 — 563 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $17,500

Seven quarterly events are recommended beginning on the date of the failed stack test (October 30, 2006) and ending on case screening date (May 15, 2008).

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

Estimated EB Amount $735 **Violation Final Penalty Total** $18,375

This violation Final Assessed Penalty (adjusted for limits) $18,375

Economic Benefit Worksheet

Respondent Building Materials Corporation of America
Case ID No. 35904
Reg. Ent. Reference No. RN100788959
Media Air
Violation No. 2

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				0.00	$0	n/a	$0
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)	$6,500	30-Oct-2006	1-Feb-2009	2.26	$735	n/a	$735

Notes for DELAYED costs: These are approximate costs for conducting a stack test and certifying compliance for EPN 8, beginning on the date of the failed stack test, and ending on the projected date of compliance.

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: $6,500

TOTAL: $735

Screening Date 15-May-2008 **Docket No.** 2008-0805-AIR-E **PCW**

Respondent Building Materials Corporation of America *Policy Revision 2 (September 2002)*

Case ID No. 35904 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN100788959

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 116.115(b)(2)(F), Air Permit No. 7711A, Special Condition No. 9, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to conduct stack testing on EPN COOL1. Specifically, Special Condition No. 9 requires that it be sampled 180 days after the issuance of the permit dated October 21, 2004, which was no later than April 19, 2005.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 1101 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,508

Statutory Limit Test

Violation Final Penalty Total $1,050

This violation Final Assessed Penalty (adjusted for limits) $1,050

Economic Benefit Worksheet

Respondent Building Materials Corporation of America
Case ID No. 35904
Reg. Ent. Reference No. RN100788959
Media Air
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
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				0.00	$0	n/a	$0
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)	$10,000	19-Apr-2005	24-Apr-2008	3.02	$1,508	n/a	$1,508

Notes for DELAYED costs: These are approximate costs for conducting stack testing, beginning on the date the testing was required to have been done, and ending on the date testing occurred for EPN COOL1.

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: $10,000

TOTAL: $1,508

Compliance History

Customer/Respondent/Owner-Operator:	CN600474753	Building Materials Corporation of America	Classification: AVERAGE	Rating: 1.33
Regulated Entity:	RN100788959	GAF Materials Corporation of America	Classification: AVERAGE	Site Rating: 0.32

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	7711A
	AIR NEW SOURCE PERMITS	PERMIT	47455
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	DB0378S
	AIR NEW SOURCE PERMITS	AFS NUM	4811300036
	AIR NEW SOURCE PERMITS	PERMIT	48785
	AIR NEW SOURCE PERMITS	REGISTRATION	81652
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	23705
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD044630895
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31113
	STORMWATER	PERMIT	TXR05N690
	AIR OPERATING PERMITS	ACCOUNT NUMBER	DB0378S
	AIR OPERATING PERMITS	PERMIT	2771

Location: 2600 Singleton Blvd., Dallas, TX 75212 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region:	REGION 04 - DFW METROPLEX
Date Compliance History Prepared:	May 15, 2008
Agency Decision Requiring Compliance History:	Enforcement
Compliance Period:	May 15, 2003 to May 15, 2008

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

Name: Suzanne Walrath Phone: 512/239-2134

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 11/24/2003 (255801)
2 12/31/2003 (257675)
3 06/24/2004 (271464)
4 11/29/2004 (342319)
5 06/15/2005 (393718)
6 11/08/2005 (432395)
7 04/11/2006 (457334)
8 05/22/2006 (465082)
9 08/15/2006 (508693)
10 09/27/2006 (512104)
11 11/29/2006 (518439)

12 11/29/2006 (532231)
13 01/29/2007 (537360)
14 08/21/2007 (567618)
15 04/03/2008 (637289)
16 05/01/2008 (636622)
17 05/15/2008 (656922)

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

Date 11/08/2005 (432395)

Self Report? NO 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: PERMIT 7711A Special Condition 1

Description: Failure to comply with the permit Maximum Allowable Emissions Rate Table (MAERT) emission rates for EPNs 8 and COOL3 of Permit 7711A as determined during stack testing on May 16, 2005 through May 27, 2005 and October 30 & 31, 2006.

Self Report? NO Classification Moderate

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

Rqmt Prov: PERMIT Permit No. 7711A, Special Condition 9

Description: Failure to conduct stack sampling on EPN COOL1 within 180 days of permit issuance on October 21, 2004.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	
BUILDING MATERIALS	§	**TEXAS COMMISSION ON**
CORPORATION OF AMERICA	§	
RN100788959	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0805-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 Building Materials Corporation of America ("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 an asphalt felts and coatings manufacturing plant at 2600 Singleton Boulevard in Dallas, Dallas 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 May 7, 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 Fifty Thousand Nine Hundred Twenty-Five Dollars ($50,925) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Twenty Thousand Three Hundred Seventy Dollars ($20,370) of the administrative penalty and Ten Thousand One Hundred Eighty-Five Dollars ($10,185) 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. Twenty Thousand Three Hundred Seventy Dollars ($20,370) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

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 conducted a stack test on the line no. 1 cooling section exhaust [a total of three stacks – emission point number ("EPN") COOL1] on April 24, 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:

1. Failed to comply with the permitted Maximum Allowable Emissions Rate Table ("MAERT") for the line 3 cooling section ("EPN COOL3") as determined during stack testing, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(2)(F), Air Permit No. 7711A, Special Condition No. 1, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on January 25, 2008. Specifically, at EPN COOL3, the permitted allowable hourly particulate matter ("PM") emission rate is 6.00 pounds per hour ("lbs/hr"), and during the stack test conducted on May 16 through May 27, 2005, the actual hourly PM emission rate was 29.84 lbs/hr.

2. Failed to comply with the permitted MAERT for the thermal oxidizer stack ("EPN 8") as determined during stack testing, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(2)(F), Air Permit No. 7711A, Special Condition No. 1, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on January 25, 2008. Specifically, at EPN 8, the

permitted allowable hourly sulfur dioxide ("SO_2") emission rate is 0.73 lbs/hr, and during the stack test conducted on October 30 and 31, 2006, the actual hourly rate for SO_2 was 38.49 lbs/hr, the permitted allowable hourly oxides of nitrogen ("NOx") emission rate is 0.72 lbs/hr and the actual hourly rate for NOx was 2.15 lbs/hr, and the permitted allowable carbon monoxide ("CO") emission rate is 1.26 lbs/hr and the actual hourly rate for CO was 22.46 lbs/hr.

3. Failed to conduct stack testing on EPN COOL1, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(2)(F), Air Permit No. 7711A, Special Condition No. 9, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on January 25, 2008. Specifically, Special Condition No. 9 requires that it be sampled 180 days after the issuance of the permit dated October 21, 2004, which was no later than April 19, 2005.

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: Building Materials Corporation of America, Docket No. 2008-0805-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6, Twenty Thousand Three Hundred Seventy Dollars ($20,370) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 60 days after the effective date of this Agreed Order, complete stack testing for EPN COOL3 for PM, and EPN 8 for SO_2, NOx, and CO; or

   b. Within 60 days after the effective date of this Agreed Order, submit an administratively complete permit amendment application to increase allowable emission limits for PM from EPN COOL3, and SO_2, NOx, and CO from EPN 8, and comply with any

subsequently issued requirements and timelines for stack testing for PM from EPN COOL3 and for SO_2, NOx, and CO from EPN 8;

c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing; and

d. Within 240 days after the effective date of this Agreed Order, submit written certification of the results of the stack testing for EPN COOL3 for PM and EPN 8 for for SO_2, NOx, and CO, or that either authorization to construct and operate a source of air emissions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained. The certification 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4 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.

5. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days

after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. 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.

8. 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.

9. 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

_____ 12/8/08
For the Executive Director 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.

_____ 24-November-2008
Signature Date

David Fuelleman Plant Manager
Name (Printed or typed) Title
Authorized Representative of
Building Materials Corporation of America

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.

[illegible]

[illegible]

Attachment A
Docket Number: 2008-0805-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Building Materials Corporation of America**
Penalty Amount:	**Forty Thousand Seven Hundred Forty Dollars ($40,740)**
SEP Offset Amount:	**Twenty Thousand Three Hundred Seventy Dollars ($20,370)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Texas PTA – *Clean School Bus Program***
Location of SEP:	**Dallas County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to ***Texas PTA*** for the *Clean School Bus Program* in Dallas County as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to reimburse local school districts for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Texas Congress of Parents and Teachers dba Texas PTA
Clean School Bus Program
Suzy Swan, Director of Finance
408 West 11th Street
Austin, Texas 78707

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.