

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1345-AIR-E TCEQ ID: RN100218254 CASE NO.: 34452
RESPONDENT NAME: LEHIGH CEMENT COMPANY

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 100 South Wickson Road, Woodway, McLennan County</p> <p>TYPE OF OPERATION: Cement manufacturing plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired August 10, 2009. No comments were received.</p>		
<p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney: Ms. Anna M. Treadwell, Litigation Division, MC 175, (512) 239-0974 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p>SEP Coordinator: Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2223</p> <p>TCEQ Enforcement Coordinator: Mr. James Nolan, Air Enforcement Section, MC 149, (512) 239-6634</p> <p>TCEQ Regional Contact: Mr. Gary Goldman, Waco Regional Office, MC R-9, (254) 761-3008</p> <p>Respondent: Mr. Allan Graves, Plant Manager, Lehigh Cement Company, P.O. Box 2576, Waco, Texas 76702</p> <p>Respondent's Attorney: Ms. Rebecca Rentz, Bracewell & Giuliani LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002-2770</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: N/A</p> <p>Dates of Investigation Relating to this Case: July 6, 2007; January 17, 2008; February 17, 2009</p> <p>Dates of NOEs Relating to this Case: August 6, 2007; June 5, 2008; April 21, 2009</p> <p>Background Facts: The EDRP was filed February 14, 2008. The EDFARP was filed on June 5, 2008. The Respondent signed an Agreed Order on June 18, 2009.</p> <p>Current Compliance Status: The Respondent completed the technical requirements for violation numbers 1, 2, 3, 4, and 6.</p> <p>AIR:</p> <p>1. Failed to submit annual compliance certifications and associated deviation reports [30 TEX. ADMIN. CODE §§ 122.146(1) and 122.145(2), and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to submit Continuous Emission Monitoring System Excess Emission reports [30 TEX. ADMIN. CODE §§ 101.20(3), 116.115(c), 122.143(4) and 122.145(1)(A); TEX. HEALTH & SAFETY CODE § 382.085(b); New Source Review Permit No. 9399/PSD-TX-624, Special Condition No. 13; and Federal Operating Permit No. O-1035, Special Terms and Conditions No. 7].</p> <p>3. Failed to conduct monthly visual opacity emissions readings [30 TEX. ADMIN. CODE §§ 101.20(1) and 122.143(4), 40 CFR § 60.63, Federal Operating Permit No. O-1035 Special Terms and Conditions No. 3, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>4. Failed to comply with the exhaust gas temperature standard [30 TEX. ADMIN. CODE §§ 113.690 and 122.143(4); 40 CFR § 63.1344(a); TEX. HEALTH & SAFETY CODE § 382.085(b); and Federal Operating Permit No. O-1035, Special Terms and Conditions No. 1D].</p>	<p>Total Assessed: \$160,140</p> <p>Total Deferred: \$55,590 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$104,550</p> <p>The Respondent paid \$104,550 of the administrative penalty. The remaining amount of \$55,590 shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project (SEP).</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that Respondent has implemented the following corrective measures:</p> <ol style="list-style-type: none"> Submitted annual certifications and deviation reports on November 8, 2007. Submitted Continuous Emission Monitoring System excess emission reports on November 8, 2007. Revised the exhaust gas alarm system, installed a water spray system to reduce exhaust gas temperatures, and have complied with the exhaust gas standard since April 2007. Submitted the 2005 and 2006 reporting period State Implementation Plan Annual Emission Reports on November 8, 2007. Implemented improvements to training and oversight of personnel in order to address the monthly opacity emissions measurements by having to two employees at the Plant certified visible emission observers. <p>Ordering Provisions:</p> <p>Within 30 days, the Respondent shall implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A).</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 180 days, implement improvements to training, design, operation, or maintenance procedures, in order to address the nitrogen oxide emissions above current State Implementation Plan limits and to prevent the recurrence of same or similar incidents; and Within 195 days, submit written certification and detailed supporting documentation to demonstrate compliance.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>5. Failed to comply with nitrogen oxide emission limits currently under a State Implementation Plan [30 TEX. ADMIN. CODE § 117.283(a)¹ and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>6. Failed to submit State Implementation Plan Annual Emission Reports [30 TEX. ADMIN. CODE § 117.283(c)² and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		

¹ 30 TEX. ADMIN. CODE § 117.283(a) is now found at 30 TEX. ADMIN. CODE § 117.3120(a) adopted to be effective June 14, 2007, 32 Tex. Reg. 3206.

² 30 TEX. ADMIN. CODE § 117.283(c) is now found at 30 TEX. ADMIN. CODE § 117.3120(c) adopted to be effective June 14, 2007, 32 Tex. Reg. 3206.

Attachment A
Docket Number: 2007-1345-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Lehigh Cement Company
Penalty Amount: One hundred sixty thousand one hundred forty dollars (\$160,140)
SEP Offset Amount: Fifty-five thousand five hundred ninety dollars (\$55,590)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Congress of Parents and Teachers d/b/a Texas PTA –
Texas PTA Clean School Buses
Location of SEP: 212 Austin-Waco

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 Congress of Parents and Teachers d/b/a Texas PTA~~ for the ~~Texas PTA Clean School Bus~~ project as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used to reimburse local school districts for the cost of retrofitting or replacing school buses with cleaner technology buses to reduce air pollution emissions. 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

Passengers, drivers, and students in the area where school buses idle during transportation are subject to harmful diesel exhaust emission every school day. Apart from containing the ozone precursors NO_x and HC, as well as particulate matter (PM), diesel exhaust is known to cause or exacerbate a number of respiratory diseases, including asthma.

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 & Teachers Association
Supplemental Environmental Projects
Attention: Suzy Swan, Director of Finance
408 W. 11th Street
Austin, Texas 78701

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:

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

4. Failure to Fully Perform

If 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)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	6-Aug-2007	Screening	15-Aug-2007	EPA Due	29-Apr-2008
	PCW	6-Dec-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Lehigh Cement Company		
Reg. Ent. Ref. No.	RN100218254		
Facility/Site Region	9-Waco	Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	34452	No. of Violations	1	
Docket No.	2007-1345-AIR-E	Order Type	1660	
Media Program(s)	Air	Enf. Coordinator	James Nolan	
Multi-Media		EC's Team	EnforcementTeam 4	
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 EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes

0% Enhancement* **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 **Adjustment**

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

Notes

PAYABLE PENALTY

A

Screening Date 15-Aug-2007

Docket No. 2007-1345-AIR-E

PCW

Respondent Lehigh Cement Company

Policy Revision 2 (September 2002)

Case ID No. 34452

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN100218254

Media [Statute] Air

Enf. Coordinator James Nolan

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)	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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> 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

Penalty enhancement due to one nonsimilar NOV.

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

Screening Date 15-Aug-2007 **Docket No.** 2007-1345-AIR-E **PCW**
Respondent Lehigh Cement Company *Policy Revision 2 (September 2002)*
Case ID No. 34452 *PCW Revision June 26, 2007*
Reg. Ent. Reference No. RN100218254
Media [Statute] Air
Enf. Coordinator James Nolan
Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code §§ 122.146(1) and 122.145(2) and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to submit annual compliance certifications and associated deviation reports. Specifically, the Respondent failed to submit annual certifications and deviation reports for the following reporting periods: May 10, 2004 through May 9, 2005; May 10, 2005 through May 9, 2006; and May 10, 2006 through May 9, 2007.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

Matrix Notes
 The Respondent failed to comply with 100% of the rule requirement.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$7,500

Three annual events are recommended.

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

Estimated EB Amount \$99 **Violation Final Penalty Total** \$7,650

This violation Final Assessed Penalty (adjusted for limits) \$7,650

Economic Benefit Worksheet

Respondent Lehigh Cement Company
Case ID No. 34452
Reg. Ent. Reference No. RN100218254
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$500	10-Jun-2005	10-Apr-2008	2.8	\$5	\$95	\$99
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 of preparation and submittal of annual compliance certifications and deviation reports. Date required is the date the first report should have been submitted. Final date is the expected 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

\$99

Compliance History

Customer/Respondent/Owner-Operator: CN600129597 Lehigh Cement Company Classification: AVERAGE Rating: 0.13
 Regulated Entity: RN100218254 LEHIGH CEMENT COMPANY Classification: AVERAGE Site Rating: 0.13

ID Number(s):	AIR OPERATING PERMITS AIR OPERATING PERMITS INDUSTRIAL AND HAZARDOUS WASTE GENERATION INDUSTRIAL AND HAZARDOUS WASTE GENERATION AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION STORMWATER STORMWATER USED OIL	ACCOUNT NUMBER PERMIT EPA ID SOLID WASTE REGISTRATION # (SWR) PERMIT PERMIT PERMIT REGISTRATION ACCOUNT NUMBER REGISTRATION REGISTRATION AFS NUM REGISTRATION EPA ID PERMIT REGISTRATION	MB0123F 1035 TXD035382746 31659 49057 9399 50092 72008 MB0123F 70830 70901 4830900005 53589 TXR05M346 TXR05M346 A85880
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Location: 100 WICKSON RD, WACO, TX, 76712 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: August 17, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 17, 2002 to August 17, 2007

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

Name: James Nolan Phone: (512) 239-6634

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 | 11/05/2002 | (15810) |
| N/A | | |
| 2 | 11/05/2002 | (5293) |
| 3 | 12/16/2002 | (19468) |
| 4 | 02/13/2003 | (12904) |
| 5 | 04/03/2003 | (29050) |
| 6 | 05/01/2003 | (6607) |
| 7 | 07/02/2003 | (134112) |
| 8 | 08/15/2003 | (149780) |
| 9 | 02/24/2004 | (262960) |
| 10 | 03/05/2004 | (263981) |
| 11 | 04/22/2004 | (268682) |
| 12 | 05/20/2004 | (272561) |
| 13 | 06/09/2004 | (274753) |
| 14 | 08/10/2004 | (288818) |
| 15 | 02/10/2005 | (349507) |
| 16 | 02/14/2005 | (349798) |

17 02/17/2005 (351144)
18 03/04/2005 (373183)
19 03/08/2005 (373485)
20 03/21/2005 (373253)
21 04/01/2005 (375128)
22 04/20/2005 (374854)
23 03/21/2006 (459397)
24 03/21/2006 (458959)
25 11/16/2006 (519629)
26 03/05/2007 (542733)
27 04/05/2007 (554765)
28 08/03/2007 (566813)

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

Date 02/24/2004 (262960)

Self Report? NO

Classification Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure to obtain pre-construction authorization in accordance with 30 Texas Administrative Code (TAC) 116.110 (a) for the installation of an automated cement bag packing unit and palletizer.

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	6-Aug-2007	Screening	1-Apr-2008	EPA Due	29-Apr-2008
	PCW	22-May-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Lehigh Cement Company		
Reg. Ent. Ref. No.	RN100218254		
Facility/Site Region	9-Waco	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	34452	No. of Violations	5
Docket No.	2007-1345-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	James Nolan
Multi-Media		EC's Team	EnforcementTeam 4
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.

2% Enhancement *Subtotals 2, 3, & 7*

Notes

Culpability 0% Enhancement *Subtotal 4*

Notes

Good Faith Effort to Comply 0% Reduction *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	x	(mark with x)

Notes

0% Enhancement* *Subtotal 6*

Approx. Cost of Compliance *Capped at the Total EB \$ Amount

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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

B

Screening Date 1-Apr-2008

Docket No. 2007-1345-AIR-E

PCW

Respondent Lehigh Cement Company

Policy Revision 2 (September 2002)

Case ID No. 34452

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN100218254

Media [Statute] Air

Enf. Coordinator James Nolan

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)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> **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

Penalty enhancement due to one non-similar NOV.

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

Screening Date 1-Apr-2008	Docket No. 2007-1345-AIR-E	PCW
Respondent Lehigh Cement Company	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34452	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN100218254		
Media [Statute] Air		
Enf. Coordinator James Nolan		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code §§ 101.20(3), 116.115(c), 122.143(4) and 122.145(1)(A), Tex. Health & Safety Code § 382.085(b), New Source Review Permit No. 9399/PSD-TX-624 Special Condition No. 13 and Federal Operating Permit No. O-1035 Special Terms and Conditions No. 7	
Violation Description	Failed to submit Continuous Emission Monitoring System Excess Emission reports. Specifically, the Respondent failed to submit excess emission reports for the seven semiannual reporting periods beginning May 10, 2004 and ending November 9, 2007, as documented during a record review conducted January 17, 2008.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix					
OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
Matrix Notes	The Respondent failed to comply with 100% of the rule requirement.				
Adjustment <input type="text" value="\$7,500"/>					

Violation Events				
	Number of Violation Events	<input type="text" value="7"/>	Number of violation days	<input type="text" value="1279"/>
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x	Violation Base Penalty <input type="text" value="\$17,500"/>	
Seven single events are recommended.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$375"/>	Violation Final Penalty Total <input type="text" value="\$17,850"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$17,850"/>	

Economic Benefit Worksheet

Respondent Lehigh Cement Company
Case ID No. 34452
Reg. Ent. Reference No. RN100218254
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$2,500	10-Nov-2004	9-Nov-2007	3.0	\$375	n/a	\$375
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 of preparation and submittal quarterly CEMS excess emission reports. Date required is the date the first report should have been submitted. Final date is the 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

\$375

Screening Date 1-Apr-2008	Docket No. 2007-1345-AIR-E	PCW
Respondent Lehigh Cement Company	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34452	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN100218254		
Media [Statute] Air		
Enf. Coordinator James Nolan		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	30 Tex. Admin. Code §§ 101.20(1) and 122.143(4), 40 Code of Federal Regulations § 60.63, Federal Operating Permit No. O-1035 Special Terms and Conditions No. 3, and Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failed to conduct monthly visual opacity emissions readings. Specifically, the respondent failed to conduct and record opacity emissions for Unit 65, Unit 1012, and Unit F 62 for the 42 monthly monitoring periods beginning May 10, 2004 and ending November 9, 2007, as documented during a record review conducted January 17, 2008.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

Violation Base Penalty

42 single events are recommended to represent the 14 quarters for the three units.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$709"/>	Violation Final Penalty Total <input type="text" value="\$42,840"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$42,840"/>	

Economic Benefit Worksheet

Respondent: Lehigh Cement Company
Case ID No. 34452
Reg. Ent. Reference No. RN100218254
Media: Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$2,000	10-May-2004	30-Jan-2009	4.7	\$473	n/a	\$473
Training/Sampling	\$1,000	10-May-2004	30-Jan-2009	4.7	\$236	n/a	\$236
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 of compliance. Date required is the date the monitoring and recording was required. Final date is the 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

\$3,000

TOTAL

\$709

Screening Date 1-Apr-2008	Docket No. 2007-1345-AIR-E	PCW
Respondent Lehigh Cement Company	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34452	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN100218254		
Media [Statute] Air		
Enf. Coordinator James Nolan		
Violation Number <input type="text" value="3"/>		
Rule Cite(s)	30 Tex. Admin. Code §§ 113.690, and 122.143(4), 40 Code of Federal Regulations § 63.1344(a), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit No. O-1035 Special Terms and Conditions No. 1D	
Violation Description	Failed to comply with the exhaust gas temperature standard. Specifically, the Respondent exceeded the exhaust gas temperature standard for kiln operation for the period beginning May 10, 2004 and ending November 9, 2007 and March 2, 2008, as documented during record reviews conducted January 17, 2008 and February 17, 2009.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Fifteen quarterly events are recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,336"/>	Violation Final Penalty Total <input type="text" value="\$38,250"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$38,250"/>	

Economic Benefit Worksheet

Respondent Lehigh Cement Company
Case ID No. 34452
Reg. Ent. Reference No. RN100218254
Media Air
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
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$5,000	10-May-2004	3-Mar-2008	3.8	\$64	\$1,272	\$1,336
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 of compliance. Date required is the date the temperature controls were required. Final date is the 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

\$5,000

TOTAL

\$1,336

Screening Date 1-Apr-2008	Docket No. 2007-1345-AIR-E	PCW
Respondent Lehigh Cement Company	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34452	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN100218254		
Media [Statute] Air		
Enf. Coordinator James Nolan		
Violation Number <input type="text" value="4"/>		
Rule Cite(s)	30 Tex. Admin. Code § 117.3120(a) [previously § 117.283(a)] and Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failed to comply with nitrogen oxide emission limits currently under a State Implementation Plan. Specifically, the Respondent exceeded the NOx emission limits standard for the period beginning May 10, 2004 and ending December 31, 2008, as documented during record reviews conducted January 17, 2008 and February 17, 2009.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Nineteen quarterly 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 Lehigh Cement Company
Case ID No. 34452
Reg. Ent. Reference No. RN100218254
Media Air
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$5,000	10-May-2004	10-Jan-2010	5.7	\$95	\$1,891	\$1,986
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 of compliance. Date required is the date the emission controls were required. Final date is the expected 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

\$5,000

TOTAL

\$1,986

Screening Date 1-Apr-2008	Docket No. 2007-1345-AIR-E	PCW
Respondent Lehigh Cement Company	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34452	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN100218254		
Media [Statute] Air		
Enf. Coordinator James Nolan		
Violation Number <input type="text" value="5"/>		
Rule Cite(s)	30 Tex. Admin. Code § 117.3120(c) [previously § 117.283(c)] and Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failed to submit State Implementation Plan Annual Emission Reports. Specifically, the Respondent failed to submit State Implementation Plan Annual Emission Reports for the 2005 and 2006 reporting periods, as documented during a record review conducted January 17, 2008.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate		Minor
	Release				
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification				
		Major	Moderate		Minor
		<input type="text" value="x"/>	<input type="text"/>		<input type="text"/>
	Matrix Notes	100% of the rule requirement was not met.			Percent <input type="text" value="25%"/>

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text" value="x"/>
	single event	<input type="text"/>

Violation Base Penalty

Two annual events are recommended.

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

Estimated EB Amount <input type="text" value="\$161"/>	Violation Final Penalty Total <input type="text" value="\$5,100"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,100"/>	

Economic Benefit Worksheet

Respondent Lehigh Cement Company

Case ID No. 34452

Reg. Ent. Reference No. RN100218254

Media Air

Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				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)	\$2,000	31-Mar-2006	9-Nov-2007	1.6	\$161	n/a	\$161

Notes for DELAYED costs

Estimated cost of preparation and submittal SIP Annual Emission Reports. Date required is the date the first report should have been submitted. Final date is the 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

\$2,000

TOTAL

\$161

Compliance History

Customer/Respondent/Owner-Operator: CN600129597 Lehigh Cement Company Classification: AVERAGE Rating: 1.92
 Regulated Entity: RN100218254 LEHIGH CEMENT WACO PLANT Classification: AVERAGE Site Rating: 0.12

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	MB0123F
	AIR OPERATING PERMITS	PERMIT	1035
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD035382746
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31659
	AIR NEW SOURCE PERMITS	AFS NUM	4830900005
	AIR NEW SOURCE PERMITS	REGISTRATION	72008
	AIR NEW SOURCE PERMITS	PERMIT	49057
	AIR NEW SOURCE PERMITS	PERMIT	9399
	AIR NEW SOURCE PERMITS	PERMIT	50092
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	MB0123F
	AIR NEW SOURCE PERMITS	REGISTRATION	70830
	AIR NEW SOURCE PERMITS	REGISTRATION	70901
	AIR NEW SOURCE PERMITS	REGISTRATION	83329
	AIR NEW SOURCE PERMITS	REGISTRATION	83562
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	53589
	STORMWATER	EPA ID	TXR05M346
	STORMWATER	PERMIT	TXR05M346
	USED OIL	REGISTRATION	A85880

Location: 100 WICKSON RD, WACO, TX, 76712 Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: April 14, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 03, 2003 to April 03, 2008

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

Name: James Nolan Phone: (512) 239-6634

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 04/03/2003 (29050)
- 2 05/01/2003 (6607)
- 3 07/02/2003 (134112)
- 4 08/15/2003 (149780)
- 5 02/24/2004 (262960)
- 6 03/05/2004 (263981)
- 7 04/22/2004 (268682)



8	05/20/2004	(272561)
9	06/09/2004	(274753)
10	08/10/2004	(288818)
11	02/10/2005	(349507)
12	02/14/2005	(349798)
13	02/17/2005	(351144)
14	03/04/2005	(373183)
15	03/08/2005	(373485)
16	03/21/2005	(373253)
17	04/01/2005	(375128)
18	04/20/2005	(374854)
19	03/21/2006	(459397)
20	03/21/2006	(458959)
21	11/16/2006	(519629)
22	03/05/2007	(542733)
23	04/05/2007	(554765)
24	08/03/2007	(566813)
25	10/04/2007	(596854)
26	12/04/2007	(610802)
27	01/23/2008	(615283)
28	01/25/2008	(615620)
29	02/01/2008	(615586)
30	02/01/2008	(615912)
31	02/13/2008	(615856)
32	03/07/2008	(615035)
33	03/19/2008	(618925)

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

Date 02/24/2004 (262960)

Self Report? NO

Classification Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure to obtain pre-construction authorization in accordance with 30 Texas Administrative Code (TAC) 116.110 (a) for the installation of an automated cement bag packing unit and palletizer.

Date 03/11/2008 (618925)

Self Report? NO

Classification Moderate

Citation: TWC Chapter 26 26.121(e)

Rqmt Prov: OP MSGP III.A.5.(h)

Description: Failure to conduct Quarterly Visual Monitoring on Outfalls 002, 003, 004 and 005 for 4 quarters.

Self Report? NO

Classification Moderate

Citation: TWC Chapter 26 26.121(e)

Rqmt Prov: OP MSGP III.D.1.(c)

OP MSGP V.E.4.

Description: Failure to conduct annual sampling for hazardous metals, TSS and pH for calendar year 2002 for all outfalls.

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
LEHIGH CEMENT COMPANY;
RN100218254**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-1345-AIR-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the Lehigh Cement Company ("Lehigh Cement") under the authority of TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and 40 CODE OF FEDERAL REGULATIONS chs. 60 and 63. The Executive Director of the TCEQ, represented by the Litigation Division, and Lehigh Cement, represented by Ms. Rebecca Rentz, of the law firm of Bracewell & Giuliani, LLP, appear before the Commission and together stipulate that:

1. Lehigh Cement owns and operates a cement manufacturing plant located at 100 South Wickson Road, Woodway, McLennan County, Texas (the "Plant").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Lehigh Cement agree that the Commission has jurisdiction to enter this Agreed Order, and that Lehigh Cement is subject to the Commission's jurisdiction.
4. Lehigh Cement received notice of the violations alleged in Section II ("Allegations") on or about August 11, 2007, June 10, 2008, and April 26, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Lehigh Cement of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of one hundred sixty thousand one hundred forty dollars (\$160,140.00) is assessed by the Commission in settlement of the violations alleged

in Section II ("Allegations"). Lehigh Cement paid one hundred four thousand five hundred fifty dollars (\$104,550.00) of the administrative penalty. Pursuant to TEX. WATER CODE § 7.067, fifty-five thousand five hundred ninety dollars (\$55,590) of the administrative penalty shall be conditionally offset by Lehigh Cement's completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. Lehigh Cement'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.

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 Lehigh Cement 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 Lehigh Cement has implemented the following corrective measures at the Plant:
 - a. Submitted annual certifications and deviation reports on November 8, 2007.
 - b. Submitted Continuous Emission Monitoring System excess emission reports on November 8, 2007.
 - c. Revised the exhaust gas alarm system, installed a water spray system to reduce exhaust gas temperatures.
 - d. Submitted the 2005 and 2006 reporting period State Implementation Plan Annual Emission Reports on November 8, 2007.
 - e. Implemented improvements to training, and oversight of personnel in order to address the monthly opacity emissions measurements by having two employees at the Plant certified visible emissions observers.
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 Lehigh Cement 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

Lehigh Cement is alleged to have violated:

1. 30 TEX. ADMIN. CODE §§ 122.146(1) and 122.145(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to submit annual compliance certifications and associated deviation reports. Specifically, Lehigh Cement failed to submit annual certifications and deviation reports for the following reporting periods: May 10, 2004 through May 9, 2005; May 10, 2005 through May 9, 2006; and May 10, 2006 through May 9, 2007, as documented on July 6, 2007.
2. 30 TEX. ADMIN. CODE §§ 101.20(3), 116.115(c), 122.143(4) and 122.145(1)(A); TEX. HEALTH & SAFETY CODE § 382.085(b); New Source Review Permit No. 9399/PSD-TX-624, Special Condition No. 13; and Federal Operating Permit No. O-1035, Special Terms and Conditions No. 7 by failing to submit Continuous Emission Monitoring System Excess Emission reports. Specifically, Lehigh Cement failed to submit excess emission reports for the seven semi-annual reporting periods beginning May 10, 2004 and ending November 9, 2007, as documented on January 17, 2008.
3. 30 TEX. ADMIN. CODE §§ 101.20(1) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS § 60.63, Federal Operating Permit No. O-1035 Special Terms and Conditions No. 3, and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to conduct monthly visual opacity emission readings. Specifically, Lehigh Cement failed to conduct and report opacity emissions for Unit 65, Unit 1012, and Unit F 62 for the 42 monthly reporting periods beginning May 10, 2004 and ending November 9, 2007, as documented on January 17, 2008.
4. 30 TEX. ADMIN. CODE §§ 113.690 and 122.143(4); 40 CODE OF FEDERAL REGULATIONS § 63.1344(a); TEX. HEALTH & SAFETY CODE § 382.085(b); and Federal Operating Permit No. O-1035, Special Terms and Conditions No. 1D by failing to comply with the exhaust gas temperature standard. Specifically, Lehigh Cement exceeded the exhaust gas temperature standard for the kiln for the period beginning May 10, 2004 and ending November 9, 2007 and on March 2, 2008, as documented on January 17, 2008 and February 17, 2009.
5. 30 TEX. ADMIN. CODE § 117.283(a)¹ and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with nitrogen oxide limits currently under a State Implementation Plan.

¹ 30 TEX. ADMIN. CODE § 117.283(a) is now found at 30 TEX. ADMIN. CODE § 117.3120(a) adopted to be effective June 14, 2007, 32 Tex. Reg. 3206.

Specifically, Lehigh Cement exceeded the NOx emission limits standard for the period beginning May 10, 2004 and ending December 31, 2008, as documented on January 17, 2008 and February 17, 2009.

6. 30 TEX. ADMIN. CODE § 117.283(c)² and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to submit State Implementation Plan Annual Emission Reports. Specifically, Lehigh Cement failed to submit State Implementation Plan Annual Emission Reports for the 2005 and 2006 reporting periods, as documented on January 17, 2008.

III. DENIALS

Lehigh Cement generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Lehigh Cement pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Lehigh Cement’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 “TCEQ” and shall be sent with the notation “Lehigh Cement Company, Docket No. 2007-1345-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. Lehigh Cement shall implement and complete a Supplemental Environmental Project (“SEP”) in accordance with TEX. WATER CODE § 7.067 and as set forth in Section I, Paragraph 6, above. Fifty-five thousand five hundred ninety dollars (\$55,590.00) of the assessed administrative penalty shall be offset with the condition that Lehigh Cement implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. Lehigh Cement’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.

² 30 TEX. ADMIN. CODE § 117.283(c) is now found at 30 TEX. ADMIN. CODE § 117.3120(c) adopted to be effective June 14, 2007, 32 Tex. Reg. 3206.

3. Lehigh Cement shall undertake the following technical requirements:
- a. Within 180 days after the effective date of this Agreed Order, Lehigh Cement shall implement improvements to training, design, operation, or maintenance procedures, in order to address the nitrogen oxide emissions above current State Implementation Plan limits that occurred from May 10, 2004 to December 31, 2008, and to prevent the reoccurrence of same or similar incidents; and
 - b. Within 195 days after the effective date of this Agreed Order, Lehigh Cement shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that 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.”

Lehigh Cement shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

Gary Goldman, Air Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

4. The provisions of this Agreed Order shall apply to and be binding upon Lehigh Cement. Lehigh Cement 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 Lehigh Cement 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, Lehigh Cement's failure to comply is not a violation of this Agreed Order. Lehigh Cement shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Lehigh Cement shall notify the Executive Director within seven days after Lehigh Cement 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 Lehigh Cement shall be made in writing to the Executive Director. Extensions are not effective until Lehigh Cement 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 Lehigh Cement 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Lehigh Cement, or three days after the date on which the Commission mails notice of the Order to Lehigh Cement, 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 J. ...
For the Executive Director

7/10/2009
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 Lehigh Cement, 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 in this order and/or my failure to timely pay the penalty amount, may result in:

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

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

Allen P. Graves
Signature

JUNE 18, 2009
Date

Allen P. GRAVES
Name (Printed or typed)

PLANT MANAGER
Title

Authorized representative of Lehigh Cement Company

Lehigh Cement Company
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Attachment A
Supplemental Environmental Project

Attachment A
Docket Number: 2007-1345-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Lehigh Cement Company
Penalty Amount: One hundred sixty thousand one hundred forty dollars (\$160,140)
SEP Offset Amount: Fifty-five thousand five hundred ninety dollars (\$55,590)
Type of SEP: Pre-approved
Third-Party Recipient: **Texas Congress of Parents and Teachers d/b/a Texas PTA –**
Texas PTA Clean School Buses
Location of SEP: 212 Austin-Waco

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 Congress of Parents and Teachers d/b/a Texas PTA** for the *Texas PTA Clean School Bus* project as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used to reimburse local school districts for the cost of retrofitting or replacing school buses with cleaner technology buses to reduce air pollution emissions. 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

Passengers, drivers, and students in the area where school buses idle during transportation are subject to harmful diesel exhaust emission every school day. Apart from containing the ozone precursors NOx and HC, as well as particulate matter (PM), diesel exhaust is known to cause or exacerbate a number of respiratory diseases, including asthma.

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 & Teachers Association
Supplemental Environmental Projects
Attention: Suzy Swan, Director of Finance
408 W. 11th Street
Austin, Texas 78701

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:

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

4. Failure to Fully Perform

If 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.