

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0202-AIR-E TCEQ ID: RN1048022061 CASE NO.: 35335**  
**RESPONDENT NAME: CHALICO CONCRETE MATERIALS, INC.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input 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><b>SITE WHERE VIOLATIONS OCCURRED:</b> 2000 Port Road, Port Isabel, Cameron County</p> <p><b>TYPE OF OPERATION:</b> Concrete batch plant</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on July 2, 2007, alleging that the Respondent was creating a dust nuisance. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> The complainant has not expressed a desire to protest this action or to speak at agenda. No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired July 6, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Terry Murphy, Air Enforcement Section, MC 149, (512) 239-5025  <b>TCEQ Regional Contact:</b> Mr. Jaime A. Garza, Harlingen Regional Office, MC R15, (956) 430-6048  <b>Respondent:</b> Mr. Jose Chalico, President, Chalico Concrete Materials, Inc., P.O. Box 773, Tomball, Texas 77377  <b>Respondent's Attorney:</b> Mr. Merritt Spencer, Strasburger &amp; Price, LLP, 600 Congress Avenue, Ste. 1600, Austin, Texas 78701</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      July 2, 2007</p> <p><b>Dates of Investigation Relating to this Case:</b>                      August 3, 2007, August 29, 2007, and December 20, 2007.</p> <p><b>Date of NOE Relating to this Case:</b>                      January 9, 2008</p> <p><b>Background Facts:</b>                      The EDPRP was filed on July 1, 2008. Respondent filed an answer and the case was referred to SOAH. The preliminary hearing was waived and the parties engaged in discovery. Settlement was achieved and the Respondent signed the agreed order on April 7, 2009.</p> <p><b>Current Compliance Status:</b>                      Not yet in compliance</p> <p><b>AIR:</b></p> <ol style="list-style-type: none"> <li>Failed to pave all entry and exit roads and main traffic routes associated with the operation of a concrete batch plant (including batch truck and material delivery truck roads) [30 TEX. ADMIN. CODE § 116.115(c); TEX. HEALTH &amp; SAFETY CODE § 382.085(b); and TCEQ Standard Permit No. 77534, Special Condition No. 6(C)].</li> <li>Failed to locate stationary equipment, stockpiles, or vehicles for facilities with production rates less than or equal to 200 cubic yards per hour at least 25 feet from any property line [30 TEX. ADMIN. CODE § 116.115(c); TEX. HEALTH &amp; SAFETY CODE § 382.085(b); and TCEQ Standard Permit No. 77534, Special Condition No. 6(D)(iii)].</li> <li>Failed to obtain authorization for a source of air emissions [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH &amp; SAFETY CODE §§ 382.085(b) and 382.0518(a)].</li> <li>Failed to control the discharge of air contaminants in such a concentration and duration as to adversely affect human health or welfare, property or as to interfere with the normal use and enjoyment of property [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH &amp; SAFETY CODE § 382.085(a) and (b)].</li> </ol>	<p><b>Total Assessed:</b> \$5,350</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b>                      \$455/\$4,895</p> <p>The Respondent paid \$455 of the administrative penalty. The remaining amount of \$4,895 shall be payable in 11 monthly payments of \$455 each.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days:                         <ol style="list-style-type: none"> <li>Pave the Plant's work area around the conveyor where the front loader transfers material to the conveyor;</li> <li>Implement procedures which will prevent air contaminants from leaving the Plant in such concentration and duration as to adversely affect human health or welfare, property or interfere with the normal use and enjoyment of property; and</li> <li>Place all stationary equipment, stockpiles, and vehicles with production rates less than or equal to 200 cubic yards per hour at least 25 feet from the Plant's property line.</li> </ol> </li> <li>Within 60 days, completely dismantle and remove the second drop point and any other unauthorized construction or modification to the Plant.</li> <li>Within 75 days, submit written certification demonstrating compliance with these Ordering Provisions.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

<b>DATES</b>	Assigned	14-Jan-2008	Screening	24-Jan-2008	EPA Due	
	PCW	6-May-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Chalico Concrete Materials, Inc.		
Reg. Ent. Ref. No.	RN104802061		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	35335	No. of Violations	4	
Docket No.	2008-0202-AIR-E	Order Type	1660	
Media Program(s)	Air	Enf. Coordinator	Bryan Elliott	
Multi-Media		EC's Team	Enforcement Team 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1* **\$5,000**

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

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

**Compliance History** 7% Enhancement *Subtotals 2, 3, & 7* **\$350**

Notes: The penalty was enhanced due to one NOV for similar violations and one NOV for dissimilar violations.

**Culpability** No 0% Enhancement *Subtotal 4* **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 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% Enhancement\* *Subtotal 6* **\$0**

Total EB Amounts **\$2,087**  
 Approx. Cost of Compliance **\$21,100**  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **\$5,350**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0% *Adjustment* **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount* **\$5,350**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **\$5,350**

**DEFERRAL** 0% Reduction *Adjustment* **\$0**

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

Notes:

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **\$5,350**

Screening Date 24-Jan-2008

Docket No. 2008-0202-AIR-E

PCW

Respondent Chalico Concrete Materials, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35335

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104802061

Media [Statute] Air

Enf. Coordinator Bryan Elliott

**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	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) 7%

>> 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 penalty was enhanced due to one NOV for similar violations and one NOV for dissimilar violations.

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

<b>Screening Date</b> 24-Jan-2008	<b>Docket No.</b> 2008-0202-AIR-E	<b>PCW</b>		
<b>Respondent</b> Chalico Concrete Materials, Inc.	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 35335	<i>PCW Revision November 6, 2007</i>			
<b>Reg. Ent. Reference No.</b> RN104802061				
<b>Media [Statute]</b> Air				
<b>Enf. Coordinator</b> Bryan Elliott				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 116.115(c), Tex. Health & Safety Code § 382.085(b), and TCEQ Standard Permit No. 77534, Special Condition No. 6(C)			
<b>Violation Description</b>	Failed to pave all entry and exit roads and main traffic routes associated with the operation of concrete batch plant (including batch truck and material delivery truck roads), as documented during an investigation conducted on December 20, 2007. Specifically, the Respondent had not paved the work area around the conveyor where the front loader transfers material to the conveyor.			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	
			<b>Percent</b> <input type="text" value="5%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
<b>Falsification</b>				
<b>Major</b>				
<b>Moderate</b>				
<b>Minor</b>				
			<b>Percent</b> <input type="text" value="0%"/>	
<b>Matrix Notes</b>	Human health and the environment could have been exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
<b>Adjustment</b>			<input type="text" value="\$9,500"/>	
			<input type="text" value="\$500"/>	
<b>Violation Events</b>				
<b>Number of Violation Events</b> <input type="text" value="1"/>		<input type="text" value="1"/> <b>Number of violation days</b>		
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$500"/>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
One single event is recommended.				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b> <input type="text" value="\$1,352"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$535"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$535"/>		

### Economic Benefit Worksheet

**Respondent** Chalico Concrete Materials, Inc.  
**Case ID No.** 35335  
**Reg. Ent. Reference No.** RN104802061  
**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
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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	\$10,000	26-Oct-2006	30-Sep-2008	1.9	\$64	\$1,288	\$1,352
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to pave the conveyor work area. Date required is the earliest documented date of non-compliance. Final date is the prospective 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

\$10,000

**TOTAL**

\$1,352

<b>Screening Date</b> 24-Jan-2008	<b>Docket No.</b> 2008-0202-AIR-E	<b>PCW</b>
<b>Respondent</b> Chalico Concrete Materials, Inc.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35335	<i>PCW Revision November 6, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN104802061		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Bryan Elliott		
<b>Violation Number</b> 2		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 116.115(c), Tex. Health & Safety Code § 382.085(b), and TCEQ Standard Permit No. 77534, Special Condition No. 6(D)(iii)	
<b>Violation Description</b>	Failed to locate stationary equipment, stockpiles, or vehicles for facilities with production rates less than or equal to 200 cubic yards per hour at least 25 feet from any property line, as documented during an investigation conducted on December 20, 2007. Specifically, the Respondent had several rotary mix batch trucks parked within 25 feet of the southern property line.	
<b>Base Penalty</b>		\$10,000

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

<b>OR</b>	<b>Harm</b>				
		Major	Moderate		Minor
	<b>Release</b>				
	Actual			<b>Percent</b>	
	Potential		x	5%	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b>
					0%

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

**Adjustment** \$9,500

\$500

**Violation Events**

Number of Violation Events        Number of violation days

- mark only one with an x*
- |              |   |
|--------------|---|
| daily        |   |
| monthly      |   |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event | x |

**Violation Base Penalty** \$500

One single event is recommended.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$10"/>	Violation Final Penalty Total <input type="text" value="\$535"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$535"/>	

## Economic Benefit Worksheet

**Respondent:** Chalico Concrete Materials, Inc.

**Case ID No.:** 35335

**Reg. Ent. Reference No.:** RN104802061

**Media:** Air

**Violation No.:** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime 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				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)	\$100	26-Oct-2006	30-Sep-2008	1.9	\$10	n/a	\$10

Notes for DELAYED costs

Estimated cost to park vehicles at least 25 feet away from the property line. Date required is the earliest documented date of non-compliance. Final date is the prospective 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

\$100

TOTAL

\$10

<b>Screening Date</b> 24-Jan-2008	<b>Docket No.</b> 2008-0202-AIR-E	<b>PCW</b>
<b>Respondent</b> Chalico Concrete Materials, Inc.	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 35335	<small>PCW Revision November 6, 2007</small>	
<b>Reg. Ent. Reference No.</b> RN104802061		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Bryan Elliott		
<b>Violation Number</b>	3	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.085(b) and 382.0518(a)	
<b>Violation Description</b>	Failed to obtain authorization for a source of air emissions, as documented during an investigation conducted on December 20, 2007. Specifically, the Respondent failed to permit the second drop point of the concrete batch plant.	
<b>Base Penalty</b>		\$10,000

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>		<b>Minor</b>
	<b>Actual</b>				
<b>Potential</b>				<b>Percent</b> <input style="width: 50px;" type="text" value="0%"/>	

**>> Programmatic Matrix**

<b>Falsification</b>				
	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	x			<b>Percent</b> <input style="width: 50px;" type="text" value="10%"/>

**Matrix Notes**

100% of the rule requirement was not met.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<small>mark only one with an x</small>	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

**Violation Base Penalty**

Two monthly events are recommended from the investigation date (December 20, 2007) to the date of screening (January 24, 2008).

**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:** Chalico Concrete Materials, Inc.

**Case ID No.:** 35335

**Reg. Ent. Reference No.:** RN104802061

**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
<small>No commas or \$</small>							

### 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	\$1,000	26-Oct-2006	30-Sep-2008	1.9	\$97	n/a	\$97
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a permit. Date required is the date earliest documented non-compliance. Final date is the prospective 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

\$1,000

**TOTAL**

\$97

<b>Screening Date</b> 24-Jan-2008	<b>Docket No.</b> 2008-0202-AIR-E	<b>PCW</b>	
<b>Respondent</b> Chalico Concrete Materials, Inc.	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 35335	<i>PCW Revision November 6, 2007</i>		
<b>Reg. Ent. Reference No.</b> RN104802061			
<b>Media [Statute]</b> Air			
<b>Enf. Coordinator</b> Bryan Elliott			
<b>Violation Number</b> 4			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)		
<b>Violation Description</b>	Failed to control the discharge of air contaminants in such a concentration and duration as to adversely affect human health or welfare, property or as to interfere with the normal use and enjoyment of property, as documented during investigations conducted on August 3 and 29, 2007. Specifically, the Respondent failed to prevent a nuisance dust condition as evidenced by citizen collected video evidence taken June 29 and July 6, 2007.		
<b>Base Penalty</b>		\$10,000	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Release</b>	<b>Harm</b>	
		Major      Moderate      Minor	
	Actual	<input type="text"/> <input type="text"/> <input checked="" type="checkbox"/>	<b>Percent</b> <input type="text" value="10%"/>
Potential	<input type="text"/> <input type="text"/> <input type="text"/>		
<b>&gt;&gt; Programmatic Matrix</b>			
	Falsification	Major      Moderate      Minor	<b>Percent</b> <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/>	
<b>Matrix Notes</b>	Human health and the environment was exposed to insignificant amounts of pollutants as a result of the violation.		
<b>Adjustment</b>		<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
<b>Violation Events</b>			
	<b>Number of Violation Events</b> <input type="text" value="2"/>	<input type="text" value="2"/> <b>Number of violation days</b>	
<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 checked="" type="checkbox"/>		<b>Violation Base Penalty</b> <input type="text" value="\$2,000"/>
Two single events are recommended.			
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b> <input type="text" value="\$314"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,140"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			<input type="text" value="\$2,140"/>

### Economic Benefit Worksheet

**Respondent:** Chalico Concrete Materials, Inc.  
**Case ID No.:** 35335  
**Reg. Ent. Reference No.:** RN104802061  
**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				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)	\$5,000	29-Jun-2007	30-Sep-2008	1.3	\$314	n/a	\$314

**Notes for DELAYED costs**  
 Estimated cost for a dust control device. Date required is the earliest documented date of non-compliance. Final date is the prospective 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**

<b>Approx. Cost of Compliance</b>	\$5,000	<b>TOTAL</b>	\$314
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# Compliance History

Customer/Respondent/Owner-Operator:	CN602951626	Chalico Concrete Materials, Inc.	Classification: AVERAGE	Rating: 5.50
Regulated Entity:	RN104802061	CHALICO CONCRETE BATCH PLANT	Classification: AVERAGE	Site Rating: 8.00
ID Number(s):	AIR NEW SOURCE PERMITS	REGISTRATION		77534
	AIR NEW SOURCE PERMITS	REGISTRATION		80992
Location:	2000 PORT RD, PORT ISABEL, TX, 78578		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	January 24, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 24, 2003 to January 24, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Bryan Elliott</u>	Phone:	<u>239-6162</u>	

## 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 | 06/14/2006 | (481653) |
| 2 | 11/27/2006 | (517645) |
| 3 | 01/11/2008 | (612948) |

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

- |   |                  |  |                 |          |
|---|------------------|--|-----------------|----------|
| 1 | Date: 06/09/2006 | (481653)   |                 |          |
|   | Self Report?     | NO   | Classification: | Minor    |
|   | Rqmt Prov:       | PERMIT MSGP Part III, Section A page 15.   |                 |          |
|   | Description:     | Failure to maintain the SWP3 on-site and available for inspection.   |                 |          |
| 2 | Date: 11/29/2006 | (517645)   |                 |          |
|   | Self Report?     | NO   | Classification: | Moderate |
|   | Citation:        | 30 TAC Chapter 116, SubChapter B 116.115(c)  |                 |          |
|   | Rqmt Prov:       | PA Permit 77534 Special Condition 3(D)   |                 |          |
|   | Description:     | Failure to have a warning device installed on each bulk storage silo.  |                 |          |
|   | Self Report?     | NO   | Classification: | Moderate |
|   | Citation:        | 30 TAC Chapter 116, SubChapter B 116.115(c)  |                 |          |
|   | Rqmt Prov:       | PA Permit 77534 Special Condition 6(C)   |                 |          |
|   | Description:     | Failure to pave all entry and exit roads and main traffic routes associated with the operation of concrete batch plant (including batch truck and material delivery truck roads).  |                 |          |
|   | Self Report?     | NO   | Classification: | Moderate |
|   | Citation:        | 30 TAC Chapter 116, SubChapter B 116.115(c)  |                 |          |
|   | Rqmt Prov:       | PA Permit 77534 S. C. 6(D)(ii)   |                 |          |
|   | Description:     | Failure to locate stationary equipment, stockpiles, or vehicles for facilities with production rates less than or equal to 200 cubic yards per hour at least 25 feet from any property line or for facilities with production rates more than 200 cubic yards per hour and less than or equal to 300 cubic yards per hour at lea |                 |          |

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c)		
Rqmt Prov:	PA Permit 77534 Special Condition 6(E)(i)		
Description:	Failure to have dust suppressing fencing along the traffic routes and work areas within the buffer distance in lieu of the distance requirements.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c)		
Rqmt Prov:	PA Permit 77534 Special Condition 6(E)(ii)		
Description:	Failure to have dust suppressing fencing along the traffic routes and work areas within the buffer distance in lieu of the distance requirements.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c)		
Rqmt Prov:	PA Permit 77534 Special Condition 1(F)		
Description:	Failure to maintain records on site and made available upon request.		
Self Report?	NO	Classification:	Major
Citation:	30 TAC Chapter 116, SubChapter B 116.110(a)		
Description:	Failure to obtain permission or authorization from the Texas Commission on Environmental Quality to construct and operate a regulated entity.		

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  
AGAINST CHALICO CONCRETE  
MATERIALS, INC.;  
RN104802061**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2008-0202-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 Chalico Concrete Materials, Inc. (the "Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Merritt Spencer of the law firm Strasburger & Price, LLP, appear before the Commission and together stipulate that:

1. Respondent owns and operates a concrete batch plant located at 2000 Port Road in Port Isabel, Cameron County, Texas (the "Plant").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 14, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of five thousand three hundred fifty dollars (\$5,350.00) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). Respondent paid four hundred fifty-five dollars (\$455.00) of the administrative penalty. The remaining amount of four thousand eight hundred ninety-five dollars (\$4,895.00) of the administrative penalty shall be payable in 11 monthly payments of four hundred forty-five dollars (\$445.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Respondent agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. During an investigation conducted on December 20, 2007, a TCEQ investigator documented that Respondent violated:
  - a. 30 TEX. ADMIN. CODE § 116.115(c); TEX. HEALTH & SAFETY CODE § 382.085(b); and TCEQ Standard Permit No. 77534, Special Condition No. 6(C) by failing to pave all entry and exit roads and main traffic routes associated with the operation of a concrete

batch plant (including batch truck and material delivery truck roads). Specifically, the Respondent had not paved the work area around the conveyor where the front loader transfers material to the conveyor.

- b. 30 TEX. ADMIN. CODE § 116.115(c); TEX. HEALTH & SAFETY CODE § 382.085(b); and TCEQ Standard Permit No. 77534, Special Condition No. 6(D)(iii) by failing to locate stationary equipment, stockpiles, or vehicles for facilities with production rates less than or equal to 200 cubic yards per hour at least 25 feet from any property line. Specifically, the Respondent had several rotary mix batch trucks parked within 25 feet of the southern property line.
  - c. 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a) by failing to obtain authorization for a source of air emissions. Specifically, the Respondent failed to obtain authorization for having a second drop point at the Plant.
2. During investigations conducted on August 3 and August 29, 2007, a TCEQ investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b) by failing to control the discharge of air contaminants in such a concentration and duration as to adversely affect human health or welfare, property or as to interfere with the normal use and enjoyment of property.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and 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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Chalico Concrete Materials, Inc., Docket No. 2008-0202-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. Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, Respondent shall pave the Plant's work area around the conveyor where the front loader transfers material to the conveyor.
  - b. Within 30 days after the effective date of this Agreed Order, Respondent shall implement procedures which will prevent air contaminants from leaving the Plant in such concentration and duration as to adversely affect human health or welfare, property or interfere with the normal use and enjoyment of property.
  - c. Within 30 days after the effective date of this Agreed Order, Respondent shall place all stationary equipment, stockpiles, and vehicles with production rates less than or equal to 200 cubic yards per hour at least 25 feet from the Plant's property line.
  - d. Within 60 days after the effective date of this Agreed Order, Respondent shall completely dismantle and remove the second drop point and any other unauthorized construction or modification to the Plant pursuant to 30 TEX. ADMIN. CODE § 116.110(a), TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a), and TCEQ Standard Permit No. 77534.
  - e. Within 75 days after the effective date of the Agreed Order, Respondent shall submit written certification of compliance with Ordering Provision Nos. 2.a. through 2.d. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with these Ordering Provisions. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted

is, to the best of my knowledge and belief, 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:

Jaime A. Garza, Manager, Air Section  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

3. The provisions of this Agreed Order shall apply to and be binding upon Respondent. 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.
4. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

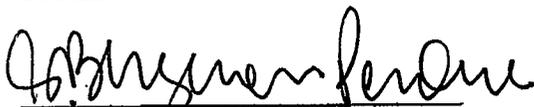
6. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Respondent, or three days after the date on which the Commission mails notice of the Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Chalico Concrete Materials, Inc.  
DOCKET NO. 2008-0202-AIR-E  
Page 7

### SIGNATURE PAGE

#### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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



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

6/17/2009

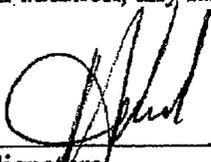
Date

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 the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

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

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

  
\_\_\_\_\_  
Signature

NORIO CHALICO  
Name (Printed or typed)  
Authorized representative of  
Chalico Concrete Materials, Inc.

APRIL 7TH 09

Date

PRESIDENT

Title