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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-2025-AIR-E TCEQ ID: RN102834678 CASE NO.: 38855
RESPONDENT NAME: Baytown Asphalt Materials, Ltd.

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 AND 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: Century Materials Crushed Concrete Plant, 11250 Interstate Highway 10 East, Chambers County</p> <p>TYPE OF OPERATION: Rock crushing facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There were three complaints, two alleging that the Respondent allowed a tar-like substance to be distributed on the feeder roads causing tar to get on the vehicles and also caused dust/odor emissions; the other alleged that hot tar, dirt, and asphalt was covering the service road as a result of Century Material's operations. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Complaints were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 10, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: SEP Coordinator: Mr. Phillip Hampsten, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, R-13, (210) 403-4006; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Greg Angel, President, Baytown Asphalt Materials, Ltd., 5210 West Road, Baytown, Texas 77521-9022 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: June 10, 2009 and June 15, 2009</p> <p>Date of Investigation Relating to this Case: June 23, 2009</p> <p>Date of NOE Relating to this Case: November 30, 2009</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>1) Failure to apply water and/or environmentally sensitive chemicals to Plant roads to control dust and prevent nuisance conditions. Specifically, during the investigation, trucks were seen exiting the Plant and causing dust to spread onto the feeder road of Interstate Highway 10 as well as onto the adjacent property. Additionally, a tar substance (Martin Asphalt, SS-1) was being spread on the ground in attempts to control the dust and was subsequently tracked onto the feeder road where it adhered to some automobiles [30 TEX. ADMIN. CODE §§ 101.4 and 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), and New Source Review ("NSR") Permit No. 51817, Special Condition 5.B.].</p> <p>2) Failure to maintain the minimum required distance for a stockpile of 75 meters from the property line. Specifically, the stockpile was located 19.81 meters from the property line [30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), and NSR Permit No. 51817, Special Condition 5.H.].</p>	<p>Total Assessed: \$3,300</p> <p>Total Deferred: \$660 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$1,320</p> <p>Total Paid to General Revenue: \$1,320</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, implement measures designed to prevent airborne dust and tar from leaving the property and causing a nuisance condition;</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a.;</p> <p>c. Within 90 days after the effective date of this Agreed Order, ensure that the stockpile is located within the distance required by the permit authorizing the rock crushing activities (whether it be the current authorization or an amended one);</p> <p>d. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision c; and</p> <p>e. The certifications shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): NSR Permit No. 51817

Attachment A
Docket Number: 2009-2025-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Baytown Asphalt Materials, Ltd.
Penalty Amount:	Two Thousand Six Hundred Forty Dollars (\$2,640)
SEP Offset Amount:	One Thousand Three Hundred Twenty Dollars (\$1,320)
Type of SEP:	Pre-approved
Third-Party Recipient:	Chambers County – <i>Chambers County Meteorological and Air Monitoring Program</i>
Location of SEP:	Chambers County

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

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Chambers County** for the *Chambers County Meteorological and Air Monitoring Program* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used for meteorological and air monitoring to provide, at a minimum, wind direction, speed, ambient temperature and ultraviolet ray intensity data for use in understanding the production and travel of ozone. Performing Party shall install the monitoring devices at public buildings in Chambers County. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

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

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by The tracking of ozone plumes assists efforts to understand the production and movement of ozone. This real-time data will be made accessible to air quality planners and the public via the TCEQ ambient air quality database. The data collected by the monitoring devices will assist in tracking ozone plumes and monitoring air quality in the target areas. The collected data will also be used for ozone alerts, weather alerts, and meteorological monitoring.

Baytown Asphalt Materials, Ltd.
Agreed Order- Attachment A

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:

County of Chambers
Atten: Donald T. Brandon, Engineer
P.O. Drawer H
Anahuac, Texas 77514

and the Respondent shall mail a copy of the Agreed Order and a copy of the contribution to:

County of Chambers
Atten: Judge Jimmy Sylvia
404 Washington
P.O. Box 939
Anahuac, Texas 77514

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

Baytown Asphalt Materials, Ltd.
Agreed Order- Attachment A

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 Offset Amount 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 October 30, 2008

DATES	Assigned	7-Dec-2009	Screening	15-Dec-2009	EPA Due	N/A
	PCW	11-Dec-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Baytown Asphalt Materials, Ltd.
Reg. Ent. Ref. No.	RN102834678
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38855	No. of Violations	2
Docket No.	2009-2025-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Trina Grieco
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	10.0% Enhancement	Subtotals 2, 3, & 7	\$300
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Notes: Penalty enhancement due to two NOVs issued for same or similar violations as those in this case.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$42
 Approx. Cost of Compliance \$750
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,300
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,300
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,300
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DEFERRAL	20.0% Reduction	Adjustment	-\$660
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,640
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Screening Date: 15-Dec-2009

Docket No.: 2009-2025-AIR-E

PCW

Respondent: Baytown Asphalt Materials, Ltd.

Policy Revision 2 (September 2002)

Case ID No.: 38855

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN102834678

Media [Statute]: Air

Enf. Coordinator: Trina Grieco

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)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 10%

>> 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 two NOVs issued for same or similar violations as those in this case.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 15-Dec-2009

Docket No.: 2009-2025-AIR-E

PCW

Respondent: Baytown Asphalt Materials, Ltd.

Policy Revision 2 (September 2002)

Case ID No: 38855

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102834678

Media [Statute]: Air

Enf. Coordinator: Trina Grieco

Violation Number: 1

Rule Cite(s): 30 Tex. Admin. Code §§ 101.4 and 116.115(c), Tex. Health & Safety Code § 382.085(b), and New Source Review ("NSR") Permit No. 51817, Special Condition 5.B.

Violation Description

Failed to apply water and/or environmentally sensitive chemicals to plant roads to control dust and prevent nuisance conditions. Specifically, during the investigation, trucks were seen exiting the Plant and causing dust to spread onto the feeder road of Interstate Highway 10 as well as onto the adjacent property. Additionally, a tar substance (Martin Asphalt, SS-1) was being spread on the ground in attempts to control the dust and was subsequently tracked onto the feeder road where it adhered to some automobiles.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment in the Houston-Galveston-Brazoria non-attainment area has been exposed to insignificant amounts of contaminants that did not exceed protective levels as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended for the quarter during which the violation occurred.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$1,100

This violation Final Assessed Penalty (adjusted for limits) \$1,100

Economic Benefit Worksheet

Respondent: Baytown Asphalt Materials, Ltd.
Case ID No.: 38855
Reg. Ent. Reference No.: RN102834678
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	23-Jun-2009	1-Aug-2010	1.11	\$14	n/a	\$14

Notes for DELAYED costs: Estimated cost to implement measures designed to prevent airborne dust and tar from leaving the property and causing a nuisance condition. The date required is the date the airborne dust was documented and the final date is the date corrective actions are projected to be completed.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$250	TOTAL	\$14
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Screening Date 15-Dec-2009 **Docket No.** 2009-2025-AIR-E **PCW**
Respondent Baytown Asphalt Materials, Ltd. *Policy Revision 2 (September 2002)*
Case ID No. 38855 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102834678
Media [Statute] Air
Enf. Coordinator Trina Grleco
Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Tex. Health & Safety Code § 382.086(b), and NSR Permit No. 51817, Special Condition 5.H.
Violation Description Failed to maintain the minimum required distance for a stockpile of 75 meters from the property line. Specifically the stockpile was located 19.81 meters from the property line.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential	x		10%

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				
				0%

Matrix Notes Human health or the environment in the Houston-Galveston-Brazoria non-attainment area could be exposed to significant amounts of contaminants that would not exceed protective levels as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 175 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended from the investigation date of June 23, 2009 to the screening date of December 15, 2009.

Good Faith Efforts to Comply 0.0% Reduction \$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 for this violation.

Violation Subtotal \$2,000

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

Estimated EB Amount \$28 **Violation Final Penalty Total** \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent: Baytown Asphalt Materials, Ltd.
Case ID No.: 38855
Reg. Ent. Reference No.: RN102834678
Media: Air
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	23-Jun-2009	1-Aug-2010	1.11	\$28	n/a	\$28

Notes for DELAYED costs

Estimated cost to relocate the stockpile to a location that is at least 75 meters from the property line. The date required is the date the violation was documented and the final date is the date corrective actions are required to be completed.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$28

Compliance History Report

Customer/Respondent/Owner-Operator: CN600535991 Baytown Asphalt Materials, Ltd. Classification: AVERAGE Rating: 2.65
Regulated Entity: RN102834678 CENTURY MATERIALS CRUSHED CONCRETE PLANT Classification: AVERAGE Site Rating: 1.33

ID Number(s): AIR NEW SOURCE PERMITS PERMIT 51817

Location: 11250 INTERSTATE HIGHWAY 10 EAST
CHAMBERS COUNTY 77520

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: December 10, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 10, 2004 to December 10, 2009

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

Name: Trina Grieco Phone: (210) 403-4006

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

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 01/04/2008 (613023)

2 05/21/2008 (671634)

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

Date: 05/09/2008 (647971)

CN600535991

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
51817 PERMIT

5C THSC Chapter 382 382.085(b)

Description: Failure to comply with special condition 5H of permit 51817.

Date: 08/12/2008 (687253)

CN600535991

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter A 101.4
30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)

Description: Conducting outdoor burning and creating a nuisance condition

- 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
BAYTOWN ASPHALT MATERIALS,
LTD.
RN102834678

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-2025-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Baytown Asphalt Materials, Ltd. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a rock crushing facility at 11250 Interstate Highway 10 East in Chambers County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 5, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Three Hundred Dollars (\$3,300) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Three Hundred Twenty Dollars (\$1,320) of the

administrative penalty and Six Hundred Sixty Dollars (\$660) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. One Thousand Three Hundred Twenty Dollars (\$1,320) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
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

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to apply water and/or environmentally sensitive chemicals to Plant roads to control dust and prevent nuisance conditions, in violation of 30 TEX. ADMIN. CODE §§ 101.4 and 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), and New Source Review ("NSR") Permit No. 51817, Special Condition 5.B., as documented during an investigation conducted on June 23, 2009. Specifically, during the investigation, trucks were seen exiting the Plant and causing dust to spread onto the feeder road of Interstate Highway 10 as well as onto the adjacent property. Additionally, a tar substance (Martin Asphalt, SS-1) was being spread on the ground in attempts to control the dust and was subsequently tracked onto the feeder road where it adhered to some automobiles.
2. Failed to maintain the minimum required distance for a stockpile of 75 meters from the property line, in violation of 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), and NSR Permit No. 51817, Special Condition 5.H., as documented during an investigation conducted on June 23, 2009. Specifically the stockpile was located 19.81 meters from the property line.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Baytown Asphalt Materials, Ltd., Docket No. 2009-2025-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, One Thousand Three Hundred Twenty Dollars (\$1,320) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement measures designed to prevent airborne dust and tar from leaving the property and causing a nuisance condition;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 3.a. as described in Ordering Provision 3.e. below;
 - c. Within 90 days after the effective date of this Agreed Order, ensure that the stockpile is located within the distance required by the permit authorizing the rock crushing activities (whether it be the current authorization or an amended one);
 - d. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 3.c. as described in Ordering Provision 3.e. below; and

- e. The certifications required by Ordering Provision Nos. 3.b. and 3.d. shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Air Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

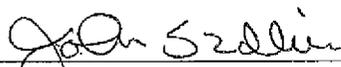
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

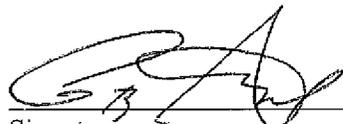
4/15/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature

5-1-10
Date

Greg Angel

Name (Printed or typed)
Authorized Representative of
Baytown Asphalt Materials, Ltd.

President

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2009-2025-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Baytown Asphalt Materials, Ltd.
Penalty Amount: Two Thousand Six Hundred Forty Dollars (\$2,640)
SEP Offset Amount: One Thousand Three Hundred Twenty Dollars (\$1,320)
Type of SEP: Pre-approved
Third-Party Recipient: Chambers County – *Chambers County Meteorological and Air Monitoring Program*
Location of SEP: Chambers County

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

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Chambers County** for the *Chambers County Meteorological and Air Monitoring Program* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used for meteorological and air monitoring to provide, at a minimum, wind direction, speed, ambient temperature and ultraviolet ray intensity data for use in understanding the production and travel of ozone. Performing Party shall install the monitoring devices at public buildings in Chambers County. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

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

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by The tracking of ozone plumes assists efforts to understand the production and movement of ozone. This real-time data will be made accessible to air quality planners and the public via the TCEQ ambient air quality database. The data collected by the monitoring devices will assist in tracking ozone plumes and monitoring air quality in the target areas. The collected data will also be used for ozone alerts, weather alerts, and meteorological monitoring.

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:

County of Chambers
Atten: Donald T. Brandon, Engineer
P.O. Drawer H
Anahuac, Texas 77514

and the Respondent shall mail a copy of the Agreed Order and a copy of the contribution to:

County of Chambers
Atten: Judge Jimmy Sylvia
404 Washington
P.O. Box 939
Anahuac, Texas 77514

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

Baytown Asphalt Materials, Ltd.
Agreed Order- Attachment A

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 Offset Amount 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.

