

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2010-1411-IWD-E **TCEQ ID:** RN105628077 **CASE NO.:** 40293
RESPONDENT NAME: CEMEX Construction Materials South, LLC

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 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 checked="" 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: Navigation Plant, 5303 Navigation Boulevard, Houston, Harris County</p> <p>TYPE OF OPERATION: Ready-mix concrete 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 has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 24, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Patrick L. Strader, Vice President/General Manager, CEMEX Construction Materials South, LLC, 411 North Sam Houston Parkway East, Houston, Texas 77060 Mr. Daniel Escobar, Environmental Manager, CEMEX Construction Materials South, LLC, 411 North Sam Houston Parkway East, Houston, Texas 77060 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 type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 6, 2010</p> <p>Date of NOV/NOE Relating to this Case: August 6, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>WATER</p> <p>1) Failed to comply with permitted effluent limits for total suspended solids and pH [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110925, Part III Permit Requirements Section A for Outfall Nos. 001, 002, and 003].</p> <p>2) Failed to provide monitoring results at intervals specified in the permit. Specifically, the Respondent did not report the following parameters on the Discharge Monitoring Report ("DMR"): pH minimum at Outfall Nos. 001 and 002 for the monitoring period ending October 31, 2009 and pH minimum for the monitoring periods ending June 30, July 31, September 30, October 31, November 30, and December 31, 2009; and daily maximum flow at Outfall No. 003 for the monitoring periods ending June 30, July 31, and September 30, 2009 [30 TEX. ADMIN. CODE §§ 305.125(1), 319.1 and 319.7(d), and TPDES General Permit No. TXG110925, Part IV Standard Permit Conditions No. 7(f)].</p> <p>3) Failed to submit the DMR for the monitoring period ending December 31, 2009 for Outfall No. 001 and failed to submit the annual toxicity report for the monitoring period ending January</p>	<p>Total Assessed: \$9,315</p> <p>Total Deferred: \$1,863 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$7,452</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - Average</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>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, submit the DMR for the month of December 2009 and the annual Toxicity Report for the monitoring period ending January 31, 2010.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Submit written certification of compliance with Ordering Provision a.;</p> <p>ii. Update the Facility's operation guidance and conduct employee training to ensure the following:</p> <p>1. Monthly DMRs are submitted each month to the Enforcement Division by the 20th day of the following month for each discharge that is described in TPDES General Permit No. TXG110925;</p> <p>2. Annual reports are submitted to the Enforcement Division by February 20th of each year; and</p> <p>3. Each parameter specified in the permit is properly reported each month in accordance with TPDES General Permit No. TXG110925.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision b.ii.; and</p> <p>d. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES General Permit No. TXG110925, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

31, 2010 for Outfall Nos. 001 and 002 [30 TEX. ADMIN. CODE §§ 305.125(1) and 319.7(d) and TPDES General Permit No. TXG110925, Part III Whole Effluent Toxicity Testing for Discharges Into Fresh Receiving Waters and Part IV Standard Permit Conditions No. 7(f)].		
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Additional ID No(s): TXG110925



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned PCW	9-Aug-2010	Screening	23-Aug-2010	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	CEMEX Construction Materials South, LLC
Reg. Ent. Ref. No.	RN105628077
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40293	No. of Violations	3
Docket No.	2010-1411-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Brister
		EC's Team	Enforcement Team 1
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 Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 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.

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

Screening Date 23-Aug-2010

Docket No. 2010-1411-IWD-E

PCW

Respondent CEMEX Construction Materials South, LLC

Policy Revision 2 (September 2002)

Case ID No. 40293

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105628077

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 15%

>> 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

Enhancement for three months of self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date 23-Aug-2010

Docket No. 2010-1411-IWD-E

PCW

Respondent CEMEX Construction Materials South, LLC

Policy Revision 2 (September 2002)

Case ID No. 40293

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105628077

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES General Permit No. TXG110925, Part III Permit Requirements Section A. for Outfall Nos. 001, 002, and 003

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on July 6, 2010 and shown in the attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4

59 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$4,000

Two quarterly events are recommended for Outfall 001, one quarterly event is recommended for Outfall 002, and one quarterly event is recommended for Outfall 003.

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 \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,236

Violation Final Penalty Total \$4,600

This violation Final Assessed Penalty (adjusted for limits) \$4,600

Economic Benefit Worksheet

Respondent CEMEX Construction Materials South, LLC
Case ID No. 40293
Reg. Ent. Reference No. RN105628077
Media Water Quality
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				0.00	\$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)	\$70,000	31-Oct-2009	30-Apr-2011	1.50	\$5,236	n/a	\$5,236

Notes for DELAYED costs
 Estimated cost to install an acid treatment system at Outfall No. 1, to plug Outfall No. 2, and to conduct additional monitoring at Outfall No. 003. Date required is the initial month of noncompliance. Final date is the anticipated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$70,000

TOTAL

\$5,236

Screening Date 23-Aug-2010

Docket No. 2010-1411-IWD-E

PCW

Respondent CEMEX Construction Materials South, LLC

Policy Revision 2 (September 2002)

Case ID No. 40293

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105628077

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1), 319.1 and 319.7(d), and TPDES General Permit No. TXG110925, Part IV Standard Permit Conditions No. 7(f)

Violation Description

Failed to provide monitoring results at intervals specified in the permit, as documented during a record review conducted on July 6, 2010. Specifically, the Respondent did not report the following parameters on the Discharge Monitoring Report ("DMR"): pH minimum at Outfall Nos. 001 and 002 for the monitoring period ending October 31, 2009 and pH minimum for the monitoring periods ending June 30, July 31, September 30, October 31, November 30, and December 31, 2009 and daily maximum flow for the monitoring periods ending June 30, July 31, and September 30, 2009 at Outfall No. 003.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
				x	1%

Matrix Notes

At least 75% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 11 Number of violation days 305

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

Violation Base Penalty \$1,100

Eleven single events are recommended.

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 \$1,100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$22

Violation Final Penalty Total \$1,265

This violation Final Assessed Penalty (adjusted for limits) \$1,265

Economic Benefit Worksheet

Respondent CEMEX Construction Materials South, LLC
Case ID No. 40293
Reg. Ent. Reference No. RN105628077
Media Water Quality
Violation No. 2

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				0.00	\$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	\$250	20-Jul-2009	30-Apr-2011	1.78	\$22	n/a	\$22
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational guidance and conduct employee training to ensure that all required parameters are analyzed and submitted each month. Date required is the date the first report was due. Final date is the anticipated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

	\$250
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TOTAL

	\$22
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Screening Date 23-Aug-2010

Docket No. 2010-1411-IWD-E

PCW

Respondent CEMEX Construction Materials South, LLC

Policy Revision 2 (September 2002)

Case ID No. 40293

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105628077

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 319.7(d) and TPDES General Permit No. TXG110925, Part III Whole Effluent Toxicity Testing for Discharges Into Fresh Receiving Waters and Part IV Standard Permit Conditions No. 7(f)

Violation Description

Failed to submit the DMR for the monitoring period ending December 31, 2009 for Outfall No. 001 and failed to submit the annual toxicity report for the monitoring period ending January 31, 2010 for Outfall Nos. 001 and 002, as documented by a record review conducted on July 6, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 215 Number of violation days

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

Violation Base Penalty \$3,000

Three single events are recommended.

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 \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$21

Violation Final Penalty Total \$3,450

This violation Final Assessed Penalty (adjusted for limits) \$3,450

Economic Benefit Worksheet

Respondent CEMEX Construction Materials South, LLC
Case ID No. 40293
Reg. Ent. Reference No. RN105628077
Media Water Quality
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

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	\$250	20-Jan-2010	30-Apr-2011	1.27	\$16	n/a	\$16
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$75	20-Jan-2010	30-Apr-2011	1.27	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to submit the missing DMR and the annual toxicity report and to update operational guidance and conduct employee training to ensure that all required reports are submitted within the time frames described in TPDES General Permit No. TXG110925. Date required is the the date first report was due. Final date is the anticipated date of compliance.

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

\$325

TOTAL

\$21

Effluent Limit Violation Table

table rev.

Respondent	CEMEX Construction Materials South, LLC
ID Number(s)	TXG110925
Docket Number	2010-1411-IWD-E
Enf. Coordinator	Heather Brister

Corresponds to Violation Number 1

EFFLUENT PARAMETER				
<i>Permit Limit</i>				
	pH Maximum Concentration 9 Standard Units	Total Suspended Solids Daily Maximum Concentration 65 Milligrams per Liter	Total Suspended Solids Daily Maximum Concentration 65 Milligrams per Liter	Total Suspended Solids Daily Maximum Concentration 65 Milligrams per Liter
	Outfall No. 001	Outfall No. 001	Outfall No. 002	Outfall No. 003
Month/Year				
October 2009	10.14	277.2	87.3	82.1
February 2010	c	92.2	c	c

c = compliant

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603403973 CEMEX Construction Materials South, LLC	Classification: AVERAGE	Rating: 2.10
Regulated Entity:	RN105628077 NAVIGATION PLANT	Classification: AVERAGE	Site Rating: 0.45
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	79476
	WASTE WATER GENERAL PERMIT	PERMIT	TXG110925
Location:	5303 NAVIGATION BLVD, HOUSTON, TX, 77011		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	August 20, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 20, 2005 to August 20, 2010		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Heather Brister	Phone:	(254) 761-3034

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? | Yes |
| 3. If Yes, who is the current owner/operator? | Cemex Construction Materials South, LLC |
| 4. If Yes, who was/were the prior owner(s)/operator(s)? | Cemex Construction Materials, L.P. |
| 5. When did the change(s) in owner or operator occur? | 08/01/2008 |
| 6. Rating Date: 9/1/2009 Repeat Violator: NO | |

Components (Multimedia) for the Site :

- | | |
|---------------------------------------------------------------------------------------------------------------------|-----|
| A. Final Enforcement Orders, court judgments, 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 | 03/17/2009 | (758549) |
| 2 | 04/03/2009 | (758550) |
| 3 | 04/27/2009 | (758548) |
| 4 | 04/27/2009 | (758551) |
| 5 | 06/11/2009 | (774711) |
| 6 | 08/20/2009 | (839517) |
| 7 | 08/20/2009 | (839518) |
| 8 | 09/04/2009 | (839519) |
| 9 | 10/12/2009 | (839520) |
| 10 | 11/18/2009 | (839521) |
| 11 | 01/12/2010 | (839522) |
| 12 | 01/12/2010 | (839523) |
| 13 | 04/20/2010 | (839515) |
| 14 | 06/08/2010 | (839514) |
| 15 | 06/08/2010 | (839516) |
| 16 | 06/16/2010 | (848553) |
| 17 | 08/06/2010 | (829869) |

- | | | |
|----|-------------------------------------------------------------------------|--------------------------|
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) | |
| | Date: 10/31/2009 (839521) | CN603403973 |
| | Self Report? YES | Classification: Moderate |
| | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) | |
| | 30 TAC Chapter 305, SubChapter F 305.125(1) | |
| | Description: Failure to meet the limit for one or more permit parameter | |
| | Date: 02/28/2010 (839514) | CN603403973 |
| | Self Report? YES | Classification: Moderate |
| | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) | |
| | 30 TAC Chapter 305, SubChapter F 305.125(1) | |
| | Description: Failure to meet the limit for one or more permit parameter | |
| | Date: 03/31/2010 (839515) | CN603403973 |
| | Self Report? YES | Classification: Moderate |
| | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) | |
| | 30 TAC Chapter 305, SubChapter F 305.125(1) | |
| | Description: Failure to meet the limit for one or more permit parameter | |

- | | |
|--------------------------|-----|
| 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
CEMEX CONSTRUCTION
MATERIALS SOUTH, LLC
RN105628077**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-1411-IWD-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 CEMEX Construction Materials South, LLC ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. 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 ready-mix concrete plant located at 5303 Navigation Boulevard in Houston, Harris County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 August 11, 2010.
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 Nine Thousand Three Hundred Fifteen Dollars (\$9,315) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand Four Hundred Fifty-Two Dollars (\$7,452) of the administrative penalty and One Thousand Eight Hundred Sixty-Three Dollars (\$1,863) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director 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 Facility, the Respondent is alleged to have:

1. Failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG110925, Part III Permit Requirements Section A. for Outfall Nos. 001, 002, and 003, as documented during a record review conducted on July 6, 2010 and as shown in the following table:

EFFLUENT PARAMETER				
Permit Limit				
	pH Maximum Concentration 9 Standard Units	Total Suspended Solids Daily Maximum Concentration 65 Milligrams per Liter	Total Suspended Solids Daily Maximum Concentration 65 Milligrams per Liter	Total Suspended Solids Daily Maximum Concentration 65 Milligrams per Liter
	Outfall No. 001	Outfall No. 001	Outfall No. 002	Outfall No. 003
Month/Year				
October 2009	10.14	277.2	87.3	82.1
February 2010	c	92.2	c	c

c = compliant

2. Failed to provide monitoring results at intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1), 319.1 and 319.7(d), and TPDES General Permit No. TXG110925, Part IV Standard Permit Conditions No. 7(f), as documented during a record review conducted on July 6, 2010. Specifically, the Respondent did not report the following parameters on the Discharge Monitoring Report (“DMR”): pH minimum at Outfall Nos. 001 and 002 for the monitoring period ending October 31, 2009 and pH minimum for the monitoring periods ending June 30, July 31, September 30, October 31, November 30, and December 31, 2009 and daily maximum flow for the monitoring periods ending June 30, July 31, and September 30, 2009 at Outfall No. 003.

3. Failed to submit the DMR for the monitoring period ending December 31, 2009 for Outfall No. 001 and failed to submit the annual toxicity report for the monitoring period ending January 31, 2010 for Outfall Nos. 001 and 002, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.7(d) and TPDES General Permit No. TXG110925, Part III Whole Effluent Toxicity Testing for Discharges Into Fresh Receiving Waters and Part IV Standard Permit Conditions No. 7(f), as documented by a record review conducted on July 6, 2010.

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: CEMEX Construction Materials South, LLC, Docket No. 2010-1411-IWD-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. It is further ordered that the Respondent shall undertake the following technical requirements:

a. Within 15 days after the effective date of this Agreed Order, submit the DMR for the month of December 2009 and the annual Toxicity Report for the monitoring period ending January 31, 2010 to the address below:

Compliance Monitoring Team
Enforcement Division, MC 224
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

b. Within 30 days after the effective date of this Agreed Order:

i. Submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.e below;

ii. Update the Facility's operation guidance and conduct employee training to ensure the following:

1. Monthly DMRs are submitted each month to the Enforcement Division by the 20th day of the following month for each discharge that is described in TPDES General Permit No. TXG110925;
2. Annual reports are submitted to the Enforcement Division by November 7th of each year; and
3. Each parameter specified in the permit is properly reported each month in accordance with TPDES General Permit No. TXG110925.

c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.b.ii, in accordance with Ordering Provision No. 2.e below;

d. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES General Permit No. TXG110925, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations, in accordance with Ordering Provision No. 2.e below;

- e. The certification of compliance required by Ordering Provision Nos. 2.b.i, 2.c, and 2.d shall be notarized by a State of Texas Notary Public and include the following certification language and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance:

"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 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:

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

3. 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 Facility operations referenced in this Agreed Order.
4. 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.
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 the Respondent shall be made in writing to the Executive Director. Extensions are not

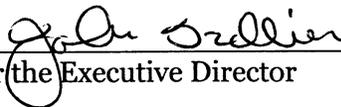
effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. 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.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. 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

2/10/2011

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

11/18/2010

Date

PATRICE L. STAPLES

Name (Printed or typed)
Authorized Representative of
CEMEX Construction Materials South, LLC

VP/GM

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.