

CAPTION: Docket No. 2010-1685-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Baytown Asphalt Materials, Ltd. in Harris County; RN100859255; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Gena Hawkins, Laurie Eaves)

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2010-1685-AIR-E **TCEQ ID:** RN100859255 **CASE NO.:** 40514
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: Baytown Asphalt Materials, 5303 Navigation Boulevard, Houston, Harris County</p> <p>TYPE OF OPERATION: Asphalt production 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 April 25, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Gena Hawkins, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2583; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Derek Angel, Executive Vice President, Baytown Asphalt Materials, Ltd., P.O. Box 57, Baytown, Texas 77522 Mr. Aaron Savell, Safety Manager, Baytown Asphalt Materials, Ltd., P.O. Box 57, Baytown, Texas 77522 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 2, 2010 through August 9, 2010</p> <p>Date of NOV/NOE Relating to this Case: September 17, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>1) Failed to prevent unauthorized visible emissions from the baghouse stack (Emission Point number D-1). Specifically, on August 9, 2010, opacity was observed to be an average of 52.3% over a six minute period [30 TEX. ADMIN. CODE §§ 101.20(1), 111.111(a)(1)(B) and 116.115(c), 40 CODE OF FEDERAL REGULATIONS § 60.92(a)(2), New Source Review ("NSR") Permit No. 21258 Special Conditions 5, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failed to keep the Plant roads watered as necessary to achieve maximum control of dust emissions. Specifically, dust emissions were observed from traffic inside the property and no control methods were being utilized [30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 21258, Special Conditions 6D and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failed to maintain records of the continuous temperature of the hot mix as monitored in the mixing section of the drum. Specifically, records of the hot mix temperature were not available for the time period from June 28, 2010 to August 8, 2010 [30 TEX. ADMIN. CODE § 116.115(b)(2)(E)(i), 116.115(b)(2)(E)(iv) and 116.115(c), NSR Permit No. 21258, Special Conditions 14B and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$2,750</p> <p>Total Deferred: \$550 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$1,100</p> <p>Total Paid to General Revenue: \$1,100</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent began maintaining records of the continuous temperature of the hot mix on August 9, 2010.</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:</p> <p>i. Implement procedures to control dust emissions from vehicle traffic within the Plant property, in accordance with NSR Permit No. 21258, Special Conditions 6D; and</p> <p>ii. Implement measures designed to ensure that opacity of emissions is not exceeded from the baghouse stack, Emission Point Number D-1, in accordance with NSR Permit No. 21258, Special Conditions 5.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision c., to demonstrate compliance with Ordering Provisions a.i. and a.ii.; and</p> <p>c. Submit the required written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): Air Account HX2867G

Attachment A
Docket Number: 2010-1685-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Baytown Asphalt Materials, Ltd.
Payable Penalty Amount: Two Thousand Two Hundred Dollars (\$2,200)
SEP Amount: One Thousand One Hundred Dollars (\$1,100)
Type of SEP: Pre-approved
Third-Party Recipient: Barbers Hill Independent School District-Alternative Fueled Vehicle and Equipment Program
Location of SEP: Harris 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 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

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Barbers Hill Independent School District** for the *Barbers Hill Vehicle and Equipment Program*. The contribution will be used in accordance with the Supplemental Environmental Project (“the Project”) between the Third-Party Recipient and the TCEQ. Specifically, the SEP Offset Amount shall be used to: 1) retire current diesel-powered or gasoline-powered vehicles and equipment and replace those vehicles and equipment with alternative-fueled or low-emission vehicles or equipment; 2) convert current vehicles and equipment to alternative-fueled vehicles or equipment; or 3) retrofit current gasoline-powered and diesel-powered vehicles and equipment to decrease emissions from those sources.

The SEP Offset Amount may only be used for: 1) incremental costs of purchase of alternative-fueled or lower-emission vehicles or equipment or retrofit of existing vehicles or equipment; 2) the incremental cost of purchase of alternative fuels versus regular gasoline or diesel fuels; or 3) other direct expenses authorized in advance by TCEQ.

Retirement of Vehicles: Any purchases of new vehicles or equipment shall comply with EPA verified and certified technology guidelines. Equipment and vehicles being retired will be operational that have current registration stickers. The retired vehicles and equipment must not be resold for any use except scrap value. Proof of registration, decommissioning, and scrappage for all retired vehicles and equipment will be submitted to TCEQ.

Retrofits and Conversions. Proof of all conversions or retrofits will meet current EPA low-emission standards. The SEP Offset Amount will be used to purchase alternative-fueled vehicles or equipment that use alternative fuels that are available for purchase within 15 miles of the operation area of the purchased fleet. Alternative-fueled technologies may include propane or electric-powered lawn mowers, propane-powered light duty vehicles and heavy equipment, and other technologies or alternative fuels as described below. The SEP Offset Amount may be used to purchase alternative fuels as described in the SEP Agreement between the Third-Party Recipient and TCEQ.

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.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

B. Environmental Benefit

Replacement of gasoline and diesel powered lawnmowers, heavy equipment, and vehicles with lower-emission items will reduce air pollution emissions of particulate matter (PM), volatile organic carbon (VOC) compounds, nitrogen oxides (NOx), and other pollutants associated with the combustion of fuel that would have been generated by the older replaced item. Use of alternative fuels combined with energy efficiency modifications results in a direct reduction in the amount of emissions that contribute to air pollution in this state.

C. Minimum Expenditure

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, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Barbers Hill ISD
Attention: John Johnson
Carl R. Griffiths & Associates
2901 Turtle Creek Drive, Suite 445
Port Arthur, TX 77642

3. Records and Reporting

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

Baytown Asphalt Materials, Ltd.
Agreed Order - Attachment A

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

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP 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 amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an 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

TCEQ

DATES	Assigned	20-Sep-2010	Screening	5-Oct-2010	EPA Due	
	PCW	10-Dec-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	Baytown Asphalt Materials, Ltd.		
Reg. Ent. Ref. No.	RN100859255		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40514	No. of Violations	3
Docket No.	2010-1685-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Gena Hawkins
		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**

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

Notes

PAYABLE PENALTY

Screening Date 5-Oct-2010

Docket No. 2010-1685-AIR-E

PCW

Respondent Baytown Asphalt Materials, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 40514

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100859255

Media [Statute] Air

Enf. Coordinator Gena Hawkins

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>)	0	0%
	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%
<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) 0%

>> 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

No adjustment for Compliance History.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 5-Oct-2010

Docket No. 2010-1685-AIR-E

PCW

Respondent Baytown Asphalt Materials, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 40514

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100859255

Media [Statute] Air

Enf. Coordinator Gena Hawkins

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.20(1), 111.111(a)(1)(B) and 116.115(c), 40 Code of Federal Regulations § 60.92(a)(2), New Source Review ("NSR") Permit No. 21258 Special Conditions 5, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent unauthorized visible emissions from the baghouse stack (Emission Point number D-1). Specifically, on August 9, 2010, opacity was observed to be an average of 52.3% over a six minute period.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment 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 Number of violation days 1

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 August 9, 2010 opacity exceedance.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$21

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent Baytown Asphalt Materials, Ltd.
Case ID No. 40514
Reg. Ent. Reference No. RN100859255
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$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	9-Aug-2010	14-Jun-2011	0.85	\$21	n/a	\$21

Notes for DELAYED costs

Estimated cost to implement measures designed to prevent opacity exceedances. The date required is the date of the opacity exceedance. The final date is the anticipated date corrective measures will be completed.

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

\$500

TOTAL

\$21

Screening Date 5-Oct-2010

Docket No. 2010-1685-AIR-E

PCW

Respondent Baytown Asphalt Materials, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 40514

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100859255

Media [Statute] Air

Enf. Coordinator Gena Hawkins

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), NSR Permit No. 21258, Special Conditions 6D and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to keep the Plant roads watered as necessary to achieve maximum control of dust emissions. Specifically, dust emissions were observed from traffic inside the property and no control methods were being utilized.

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

The failure to control dust emissions has resulted in the release of an insignificant amount of pollutants which do not exceed levels protective of human health and/or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

1 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is 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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$63

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent Baytown Asphalt Materials, Ltd.
Case ID No. 40514
Req. Ent. Reference No. RN100859255
Media Air
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
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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)	\$1,500	9-Aug-2010	14-Jun-2011	0.85	\$63	n/a	\$63

Notes for DELAYED costs

Estimated cost to implement dust control methods. Date required is the date the violation was documented and final date is when compliance is expected to be achieved.

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

\$1,500

TOTAL

\$63

Screening Date 5-Oct-2010

Docket No. 2010-1685-AIR-E

PCW

Respondent Baytown Asphalt Materials, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 40514

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100859255

Media [Statute] Air

Enf. Coordinator Gena Hawkins

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 116.115(b)(2)(E)(i), 116.115(b)(2)(E)(iv) and 116.115(c), NSR Permit No. 21258, Special Conditions 14B and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain records of the continuous temperature of the hot mix as monitored in the mixing section of the drum. Specifically, records of the hot mix temperature were not available for the time period from June 28, 2010 to August 8, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

41 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes The Respondent returned to compliance on August 9, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent Baytown Asphalt Materials, Ltd.
Case ID No. 40514
Req. Ent. Reference No. RN100859255
Media Air
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$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	\$500	2-Aug-2010	9-Aug-2010	0.02	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain records. Date required is the start date of the investigation and final date is the 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

\$500

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600535991 Baytown Asphalt Materials, Ltd.	Classification: AVERAGE	Rating: 4.22
Regulated Entity:	RN100859255 BAYTOWN ASPHALT MATERIALS	Classification: AVERAGE B	Site Rating: 3.01
ID Number(s):	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HX2867G
	MUNICIPAL SOLID WASTE PROCESSING	PERMIT	100267
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HX2867G
	AIR NEW SOURCE PERMITS	PERMIT	21258
	AIR NEW SOURCE PERMITS	REGISTRATION	75942
	AIR NEW SOURCE PERMITS	REGISTRATION	90982
	AIR NEW SOURCE PERMITS	AFS NUM	4820101930
	STORMWATER	PERMIT	TXR05V760
Location:	5303 NAVIGATION BLVD, HOUSTON, TX, 77011		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	October 05, 2010		

Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: October 05, 2005 to October 05, 2010
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Gena Hawkins Phone: (512) 239 - 2583

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: 9/1/2010 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 09/17/2010 (849260)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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.
RN100859255**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-1685-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 an asphalt production plant at 5303 Navigation Boulevard in Houston, Harris 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 September 22, 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 Two Thousand Seven Hundred Fifty Dollars (\$2,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand One Hundred Dollars (\$1,100) of the administrative penalty and Five Hundred Fifty Dollars (\$550) 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 One Hundred Dollars (\$1,100) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent began maintaining records of the continuous temperature of the hot mix on August 9, 2010.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to prevent unauthorized visible emissions from the baghouse stack (Emission Point number D-1), in violation of 30 TEX. ADMIN. CODE §§ 101.20(1), 111.111(a)(1)(B) and 116.115(c), 40 CODE OF FEDERAL REGULATIONS § 60.92(a)(2), New Source Review ("NSR") Permit No. 21258 Special Conditions 5, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted August 2, 2010 through August 9, 2010. Specifically, on August 9, 2010, opacity was observed to be an average of 52.3% over a six minute period.
2. Failed to keep the Plant roads watered as necessary to achieve maximum control of dust emissions, in violation of 30 TEX. ADMIN. CODE § 116.115(c), NSR Permit No. 21258, Special Conditions 6D and TEX. HEALTH & SAFETY CODE § 382.085(b), as

documented during an investigation conducted August 2, 2010 through August 9, 2010. Specifically, dust emissions were observed from traffic inside the property and no control methods were being utilized.

3. Failed to maintain records of the continuous temperature of the hot mix as monitored in the mixing section of the drum, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(2)(E)(i), 116.115(b)(2)(E)(iv) and 116.115(c), NSR Permit No. 21258, Special Conditions 14B and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted August 2, 2010 through August 9, 2010. Specifically, records of the hot mix temperature were not available for the time period from June 28, 2010 to August 8, 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: Baytown Asphalt Materials, Ltd., Docket No. 2010-1685-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 One Hundred Dollars (\$1,100) 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:

- i. Implement procedures to control dust emissions from vehicle traffic within the Plant property, in accordance with NSR Permit No. 21258, Special Conditions 6D; and
 - ii. Implement measures designed to ensure that opacity of emissions is not exceeded from the baghouse stack, Emission Point Number D-1, in accordance with NSR Permit No. 21258, Special Conditions 5.
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision 3.c., to demonstrate compliance with Ordering Provisions Nos. 3.a.i. and 3.a.ii.; and
 - c. Submit the required written certification as described below, and 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

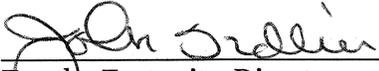
shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

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 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.
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

4.14.2011

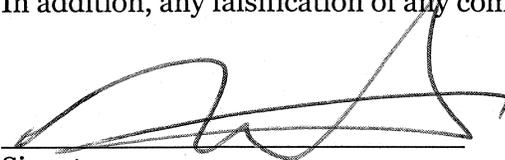
Date

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

2/9/2011

Date

Derek Angel

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

Exec. U.P.

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: 2010-1685-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Baytown Asphalt Materials, Ltd.
Payable Penalty Amount: Two Thousand Two Hundred Dollars (\$2,200)
SEP Amount: One Thousand One Hundred Dollars (\$1,100)
Type of SEP: Pre-approved
Third-Party Recipient: Barbers Hill Independent School District-Alternative Fueled Vehicle and Equipment Program
Location of SEP: Harris 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 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

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Barbers Hill Independent School District** for the *Barbers Hill Vehicle and Equipment Program*. The contribution will be used in accordance with the Supplemental Environmental Project (“the Project”) between the Third-Party Recipient and the TCEQ. Specifically, the SEP Offset Amount shall be used to: 1) retire current diesel-powered or gasoline-powered vehicles and equipment and replace those vehicles and equipment with alternative-fueled or low-emission vehicles or equipment; 2) convert current vehicles and equipment to alternative-fueled vehicles or equipment; or 3) retrofit current gasoline-powered and diesel-powered vehicles and equipment to decrease emissions from those sources.

The SEP Offset Amount may only be used for: 1) incremental costs of purchase of alternative-fueled or lower-emission vehicles or equipment or retrofit of existing vehicles or equipment; 2) the incremental cost of purchase of alternative fuels versus regular gasoline or diesel fuels; or 3) other direct expenses authorized in advance by TCEQ.

Retirement of Vehicles: Any purchases of new vehicles or equipment shall comply with EPA verified and certified technology guidelines. Equipment and vehicles being retired will be operational that have current registration stickers. The retired vehicles and equipment must not be resold for any use except scrap value. Proof of registration, decommissioning, and scrappage for all retired vehicles and equipment will be submitted to TCEQ.

Baytown Asphalt Materials, Ltd.
Agreed Order - Attachment A

Retrofits and Conversions. Proof of all conversions or retrofits will meet current EPA low-emission standards. The SEP Offset Amount will be used to purchase alternative-fueled vehicles or equipment that use alternative fuels that are available for purchase within 15 miles of the operation area of the purchased fleet. Alternative-fueled technologies may include propane or electric-powered lawn mowers, propane-powered light duty vehicles and heavy equipment, and other technologies or alternative fuels as described below. The SEP Offset Amount may be used to purchase alternative fuels as described in the SEP Agreement between the Third-Party Recipient and TCEQ.

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.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

B. Environmental Benefit

Replacement of gasoline and diesel powered lawnmowers, heavy equipment, and vehicles with lower-emission items will reduce air pollution emissions of particulate matter (PM), volatile organic carbon (VOC) compounds, nitrogen oxides (NOx), and other pollutants associated with the combustion of fuel that would have been generated by the older replaced item. Use of alternative fuels combined with energy efficiency modifications results in a direct reduction in the amount of emissions that contribute to air pollution in this state.

C. Minimum Expenditure

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, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Barbers Hill ISD
Attention: John Johnson
Carl R. Griffiths & Associates
2901 Turtle Creek Drive, Suite 445
Port Arthur, TX 77642

3. Records and Reporting

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

Baytown Asphalt Materials, Ltd.
Agreed Order - Attachment A

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

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP 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 amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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