

Executive Summary – Enforcement Matter – Case No. 40752
Congress Materials LLC
RN104961693
Docket No. 2010-1930-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Rock Crusher Plant No. 1, 11650 Mosier Valley Road, Euless, Tarrant County

Type of Operation:

Concrete and rock crusher

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Other: None

Interested Third-Parties: None

Texas Register Publication Date: April 22, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,000

Amount Deferred for Expedited Settlement: \$200

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$800

Total Due to General Revenue: \$0

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: \$0

Applicable Penalty Policy: September 2002

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Investigation Information

Complaint Date(s): August 20, 2010

Complaint Information: A complaint was received alleging the smell, visibility, and taste of dust in the air.

Date(s) of Investigation: August 20, 2010

Date(s) of NOE(s): October 28, 2010

Violation Information

Failed to obtain a change of location authorization prior to relocating the portable concrete plant and rock crusher. Specifically, the Respondent failed to obtain authorization to relocate the portable concrete and rock crusher from the 3637 Castle Drive, Garland, Texas site to the 11650 Mosier Valley Road, Euless, Texas site [30 TEX. ADMIN. CODE § 116.115(c), New Source Review Permit No. 28490F, Special Conditions No. 7B and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

Immediately upon the effective date of this Agreed Order:

1. Implement measures designed to ensure relocation requests for all intended relocations are submitted at least 30 days prior to the planned relocation date
2. Implement measures designed to ensure written authorization is obtained from the TCEQ prior to moving equipment and starting operations.

Within 45 days after the effective date of this Agreed Order, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

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Docket No. 2010-1930-AIR-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Mr. Todd Huddleson, Enforcement Division,
Enforcement Team 4, MC 149, (512) 239-2541; Ms. Laurie Eaves, Enforcement Division,
MC 219, (512) 239-4495

TCEQ SEP Coordinator: N/A

Respondent: Mr. Jay A. Krasoff, President, Congress Materials LLC, 1401 Cates
Street, Suite 201, Bridgeport, Texas 76426

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	1-Nov-2010	Screening	8-Nov-2010	EPA Due	
	PCW	12-Nov-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Congress Materials LLC
Reg. Ent. Ref. No.	RN104961693
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40752	No. of Violations	1
Docket No.	2010-1930-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Todd Huddleson
		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** **\$1,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes
The Respondent has submitted one Notice of Intent to conduct an audit. However, because a reduction would be below zero the enhancement defaults to zero.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes
The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$191**
Approx. Cost of Compliance **\$1,000**
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$1,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$1,000**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$1,000**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$200**

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 **\$800**

Screening Date 8-Nov-2010

Docket No. 2010-1930-AIR-E

PCW

Respondent Congress Materials LLC

Policy Revision 2 (September 2002)

Case ID No. 40752

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104961693

Media [Statute] Air

Enf. Coordinator Todd Huddleson

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>)	1	-1%
	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

The Respondent has submitted one Notice of Intent to conduct an audit. However, because a reduction would be below zero the enhancement defaults to zero.

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

Screening Date 8-Nov-2010

Docket No. 2010-1930-AIR-E

PCW

Respondent Congress Materials LLC

Policy Revision 2 (September 2002)

Case ID No. 40752

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104961693

Media [Statute] Air

Enf. Coordinator Todd Huddleson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), New Source Review Permit No. 28490F, Special Conditions No. 7B, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to obtain a change of location authorization prior to relocating the portable concrete and rock crusher, as documented during an investigation conducted on August 20, 2010. Specifically, the Respondent failed to obtain authorization to relocate the portable concrete and rock crusher from the 3637 Castle Drive, Garland, Texas site to the 11650 Mosier Valley Road, Euless, Texas site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 1156 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 for one approval that was not obtained.

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 \$191

Violation Final Penalty Total \$1,000

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

Economic Benefit Worksheet

Respondent Congress Materials LLC
Case ID No. 40752
Reg. Ent. Reference No. RN104961693
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)	\$1,000	10-Sep-2007	6-Jul-2011	3.82	\$191	n/a	\$191

Notes for DELAYED costs

Estimated cost to implement measures designed to ensure that approval is obtained from the TCEQ prior to relocating the portable concrete and rock crusher. The date required is the first date the crusher was known to be located at this site. 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)

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	\$1,000	TOTAL	\$191
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Compliance History

Customer/Respondent/Owner-Operator:	CN603634395 Congress Materials LLC	Classification: AVERAGE	Rating: 2.57
Regulated Entity:	RN104961693 ROCK CRUSHER PLANT NO 1	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	AIR NEW SOURCE PERMITS	AFS NUM	4811300648
	AIR NEW SOURCE PERMITS	PERMIT	28490F
	AIR NEW SOURCE PERMITS	REGISTRATION	28215
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	928490U
Location:	PORTABLE – 11650 Mosler Valley Road Euless Tarrant Co		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	January 20, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 20, 2006 to January 20, 2011		

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

Name: Todd Huddleson Phone: (512) 239-2541

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?

	OWNOPR	Congress Materials LLC
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4. If Yes, who was/were the prior owner(s)/operator(s)?

	OWNOPR	Green Aggregates, Inc.
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5. When did the change(s) in owner or operator occur? 03/10/2010
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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
 Notice of Intent Date: 02/08/2007 (556256)
 No DOV Associated
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
 - I. ^{N/A} Participation in a voluntary pollution reduction program.
 - J. ^{N/A} Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CONGRESS MATERIALS LLC
RN104961693**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-1930-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 Congress Materials LLC ("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 concrete plant and rock crusher at 11650 Mosier Valley Road in Euless, Tarrant 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 November 2, 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 One Thousand Dollars (\$1,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Hundred Dollars (\$800) of the administrative penalty and Two Hundred Dollars (\$200) 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 Plant, the Respondent is alleged to have failed to obtain a change of location authorization prior to relocating the portable concrete and rock crusher, in violation of 30 TEX. ADMIN. CODE § 116.115(c), New Source Review Permit No. 28490F, Special Conditions No. 7B and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 20, 2010. Specifically, the Respondent failed to obtain authorization to relocate the portable concrete and rock crusher from the 3637 Castle Drive, Garland, Texas site to the 11650 Mosier Valley Road, Euless, Texas site.

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: Congress Materials LLC, Docket No. 2010-1930-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. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order:

- i. Implement measures designed to ensure relocation requests for all intended relocations are submitted at least 30 days prior to the planned relocation date, in accordance with 30 TEX. ADMIN. CODE § 116.178(c); and
- ii. Implement measures designed to ensure written authorization is obtained from the TCEQ prior to moving equipment and starting operations.

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Road
Fort Worth, Texas 76118-6951

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 Plant 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

Date 4/25/2011

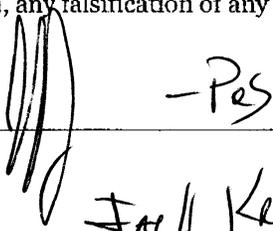
I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for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

 - Pres

Date

2/14/2011

Name (Printed or typed)
Authorized Representative of
Congress Materials LLC

Jay A. Krasoff

Title

Pres

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.