

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
IHW

Small Business:
No

Location(s) Where Violation(s) Occurred:
2580 Wald Road, New Braunfels, Comal County

Type of Operation:
Cement manufacturing facility

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: May 27, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$23,850
Amount Deferred for Expedited Settlement: N/A
Amount Deferred for Financial Inability to Pay: N/A
Total Paid to General Revenue: \$11,925
Total Due to General Revenue: \$0
SEP Conditional Offset: \$11,925
Name of SEP: National Audubon Society – Mitchell Lake Project

Compliance History Classifications:
Person/CN – Average
Site/RN – Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: December 2, 2009
Date(s) of NOV(s): N/A
Date(s) of NOE(s): March 5, 2010

Violation Information

1. Failed to properly perform closure of a waste management unit [30 TEX. ADMIN. CODE § 335.8].
2. Failed to update the Notice of Registration (“NOR”) to accurately reflect waste management activities [30 TEX. ADMIN. CODE § 335.6(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Within 60 days submit a closure plan for Waste Management Unit No. 004.
2. Respond completely and adequately to any requests for information regarding the closure plan.
3. Within 15 days after approval of the closure plan:
 - a. Update the Facility’s NOR to reflect that Waste Management Unit No. 004 has been permanently removed from service; and
 - b. Submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: November 9, 2010
Date Answer(s) Filed: December 2, 2010
SOAH Referral Date: January 31, 2011
Hearing Date(s):
Preliminary hearing: November 9, 2010 (waived)
Evidentiary hearing: July 14, 2011
Settlement Date: March 29, 2011

Contact Information

TCEQ Attorneys: Kari L. Gilbreth, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
TCEQ SEP Coordinator: Sharon Blue, Litigation Division, (512) 239-2223
TCEQ Enforcement Coordinator: Michael Meyer, Waste Enforcement Section, (512) 239- 4492
TCEQ Regional Contact: Joel Anderson, San Antonio Regional Office, MC R-13, (210) 403-4010
Respondent: Regina C. Henry, Senior Manager, Environmental – U.S.A, Cemex Construction Materials South, LLC, 920 Memorial Way, Houston, Texas 77024
Respondent's Attorney: N/A

Attachment A
Docket Number: 2010-0424-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP
Penalty Amount:	Twenty-Three Thousand Eight Hundred Fifty Dollars (\$23,850)
SEP Offset Amount:	Eleven Thousand Nine Hundred Twenty-Five Dollars (\$11,925)
Type of SEP:	Pre-approved
Third-Party Recipient:	National Audubon Society
Project Name:	Mitchell Lake Project
Location of SEP:	Bexar County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset 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 the **National Audubon Society** for the *Mitchell Lake Project*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to restore the 600-acre upland habitat at the Mitchell Lake Audubon Center and Sanctuary by removing non-native, exotic plant species, and re-establishing native grasses, forbs, and woody vegetation. Native plants that will provide maximum benefit for the wildlife of Mitchell Lake will be reintroduced throughout the uplands.

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 performed 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

Restore native habitat that will benefit wildlife.

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:

National Audubon Society
Attention: Executive Director
Audubon Texas
2904 Swiss Avenue
Dallas, TX 75204

3. Records and Reporting

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

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
PO Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
PO Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of 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

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

7. Other SEPs by TCEQ or Other Agencies

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

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	8-Mar-2010			
	PCW	29-Mar-2011	Screening	16-Mar-2010	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP
Reg. Ent. Ref. No.	RN102605375
Facility/Site Region	13-San Antonio
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	39340	No. of Violations	2
Docket No.	2010-0424-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Michael Meyer
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$22,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	6.0% Reduction	Subtotals 2, 3, & 7	\$1,350
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Notes: Enhancement for three NOVs for dissimilar violations.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$457
Approx. Cost of Compliance	\$5,250

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$23,850
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$23,850

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$23,850
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$23,850
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Screening Date 16-Mar-2010

Docket No. 2010-0424-IHW-E

PCW

Respondent Cemex Construction Materials South, LLC f/k/a Cemex

Case ID No. 39340

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102605375

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 6%

>> 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 NOVs for dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 6%

Screening Date	16-Mar-2010	Docket No.	2010-0424-IHW-E	PCW
Respondent	Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP			Policy Revision 2 (September 2002)
Case ID No.	39340			PCW Revision October 30, 2008
Reg. Ent. Reference No.	RN102605375			
Media [Statute]	Industrial and Hazardous Waste			
Enf. Coordinator	Michael Meyer			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 335.8			
Violation Description	Failed to properly perform closure of a waste management unit at the Facility, as documented during an investigation conducted on December 2, 2009. Specifically, Waste Management Unit 004 was no longer in existence. The Respondent permanently removed from service Waste Management Unit 004 without complying with the closure procedures of 30 Tex. Admin. Code § 335.8.			
		Base Penalty	\$10,000	
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	x		
		Percent	50%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
		Percent	0%	
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.			
		Adjustment	\$5,000	
			\$5,000	
Violation Events				
	Number of Violation Events	4	103	Number of violation days
	mark only one with an x	daily		Violation Base Penalty
		weekly		
		monthly	x	
		quarterly		
		semiannual		
		annual		
		single event		
		Four monthly events are recommended from the December 2, 2009 investigation to the March 16, 2010 screening date.		\$20,000
Good Faith Efforts to Comply		0.0% Reduction	\$0	
		Before NOV	NOV to EDPRP/Settlement	
	Extraordinary			
	Ordinary			
	N/A	x	(mark with x)	
	Notes	The Respondent does not meet the good faith criteria for this violation.		
		Violation Subtotal	\$20,000	
Economic Benefit (EB) for this violation		Statutory Limit Test		
	Estimated EB Amount	\$436	Violation Final Penalty Total	\$21,200
		This violation Final Assessed Penalty (adjusted for limits) \$21,200		

Economic Benefit Worksheet

Respondent Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP
Case ID No. 39340
Reg. Ent. Reference No. RN102605375
Media Industrial and Hazardous Waste
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)	\$5,000	2-Dec-2009	31-Aug-2011	1.75	\$436	n/a	\$436

Notes for DELAYED costs

Estimated cost to properly close Waste Management Unit No. 004. The Date Required is the investigation date and the Final Date is the projected 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

\$5,000

TOTAL

\$436

Screening Date 16-Mar-2010 **Docket No.** 2010-0424-IHW-E **PCW**
Respondent Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP *Policy Revision 2 (September 2002)*
Case ID No. 39340 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102605375
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Michael Meyer

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 335.6(b)
Violation Description Failed to update the Notice of Registration ("NOR") to accurately reflect waste management activities, as documented during an investigation conducted on December 2, 2009. Specifically, the Facility's NOR was not updated to reflect the current status of Waste Management Unit 004.

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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 103

mark only one with an x

daily	
weekly	
mon hly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

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 \$2,500

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

Estimated EB Amount \$21 **Violation Final Penalty Total** \$2,650

This violation Final Assessed Penalty (adjusted for limits) \$2,650

Economic Benefit Worksheet

Respondent Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP
Case ID No. 39340
Reg. Ent. Reference No. RN102605375
Media Industrial and Hazardous Waste
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	\$250	2-Dec-2009	31-Jul-2011	1.66	\$21	n/a	\$21
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 update the Facility's NOR. The date required is the investigation date and the Final Date is the projected 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

TOTAL

\$21

Compliance History

Customer/Respondent/Owner-Operator:	CN603403973	CEMEX Construction Materials South, LLC	Classification: AVERAGE	Rating: 2.33
Regulated Entity:	RN102605375	CEMEX CEMENT OF TEXAS	Classification: AVERAGE	Site Rating: 0.46
ID Number(s):	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION (SWR)		38300
	AIR OPERATING PERMITS	ACCOUNT NUMBER		CS0022K
	AIR OPERATING PERMITS	PERMIT		1126
	POLLUTION PREVENTION PLANNING	ID NUMBER		P02149
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID		TXD093742005
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION (SWR)		38300
	WASTEWATER	PERMIT		WQ0002179000
	WASTEWATER	EPA ID		TX0077534
	AIR NEW SOURCE PERMITS	PERMIT		6048
	AIR NEW SOURCE PERMITS	PERMIT		21851
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER		CS0022K
	AIR NEW SOURCE PERMITS	AFS NUM		4809100010
	AIR NEW SOURCE PERMITS	EPA ID		PSDTX74M1
	AIR NEW SOURCE PERMITS	REGISTRATION		77653
	AIR NEW SOURCE PERMITS	REGISTRATION		79815
	AIR NEW SOURCE PERMITS	REGISTRATION		94884
	PETROLEUM STORAGE TANK	REGISTRATION		1543
	TIRES	REGISTRATION		6200152
	EDWARDS AQUIFER	REGISTRATION		13-89111001
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER		CS0022K

Location: 2580 WALD RD, NEW BRAUNFELS, TX, 78132
 TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: March 25, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 10, 2005 to May 10, 2010

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

Name: Michael Meyer Phone: 239-4492

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)? OWN Cemex Construction Materials, Inc.
5. When did the change(s) in owner or operator occur? 07/26/2007OWN.
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	10/05/2005	(381022)
2	07/15/2005	(398010)
3	07/25/2005	(399404)
4	09/12/2005	(431527)
5	12/20/2005	(449892)
6	01/10/2006	(450266)
7	02/28/2006	(450360)
8	01/31/2006	(450906)
9	02/07/2006	(453583)
10	02/28/2006	(454778)
11	02/15/2006	(454917)
12	03/31/2006	(460301)
13	04/11/2006	(461061)
14	05/16/2006	(465758)
15	06/15/2006	(480825)

16 07/11/2006 (486043)
 17 07/10/2006 (486084)
 18 09/13/2006 (488816)
 19 09/13/2006 (490288)
 20 09/15/2006 (509370)
 21 09/19/2006 (510661)
 22 01/26/2007 (532352)
 23 02/21/2007 (540557)
 24 03/27/2007 (541633)
 25 03/30/2007 (555347)
 26 06/12/2007 (557458)
 27 06/14/2007 (563413)
 28 11/09/2007 (598602)
 29 01/07/2008 (613197)
 30 02/11/2008 (617615)
 31 04/29/2008 (654544)
 32 10/03/2008 (702434)
 33 05/29/2009 (747170)
 34 09/07/2009 (762483)
 35 09/07/2009 (762550)
 36 08/11/2009 (765220)
 37 11/02/2009 (779910)
 38 02/12/2010 (781483)
 39 02/12/2010 (788638)

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

Date: 02/03/2006 (453583) CN603403973
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 Description: Failure to control opacity emissions from the kiln stack due to an operator error.
 The opacity exceeded the permit limit of 20 percent opacity.

Date: 02/10/2010 (788638) CN603403973
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 Description: Particulate emissions were exceeded during a test that ended on August 1, 2008.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 Description: Hydrochloric acid emissions were exceeded during a test which ended on August 1, 2008.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 113, SubChapter C 113.690
 Description: Failed to use required EPA method during an emissions test.

Date: 02/10/2010 (781483) CN603403973
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 Description: Particulate emissions were exceeded during a test that ended on April 28, 2009.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 113, SubChapter C 113.690
 Description: Failed to use required EPA method during an emissions test.

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	§	BEFORE THE
CONCERNING	§	
CEMEX CONSTRUCTION MATERIALS	§	TEXAS COMMISSION ON
SOUTH, LLC	§	
F/K/A CEMEX CEMENT OF TEXAS, LP;	§	ENVIRONMENTAL QUALITY
RN102605375	§	
	§	

AGREED ORDER

DOCKET NO. 2010-0424-IHW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates a cement manufacturing facility located at 2580 Wald Road in New Braunfels, Comal County, Texas (the "Facility"). The Facility involves the management and/or the disposal of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of twenty-three thousand eight hundred fifty dollars (\$23,850.00) is assessed by the Commission in settlement of the violations alleged in Section II. Pursuant to TEX. WATER CODE § 7.067, eleven thousand nine hundred twenty-five dollars (\$11,925.00) of the administrative penalty shall be conditionally offset by Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the SEP Agreement ("Attachment A" - incorporated herein by reference). Respondent's obligation to pay the conditionally offset portion of the administrative penalty

assessed by this Agreed Order shall be discharged upon full compliance with all the terms and conditions of this Agreed Order, which includes timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including the SEP Agreement and any payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the conditionally offset portion of the administrative penalty shall become immediately due and payable without demand or notice. The acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order, and the Executive Director may require Respondent to pay all or part of the conditionally offset administrative penalty.

Respondent paid eleven thousand nine hundred twenty-five dollars (\$11,925.00) of the administrative penalty.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent have not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on December 2, 2009, a TCEQ San Antonio Regional Office investigator documented that Respondent violated:
 - a. 30 TEX. ADMIN. CODE § 335.8, by failing to properly perform closure of a waste management unit at the Facility. Specifically, Waste Management Unit No. 004 was no longer in existence. Respondent permanently removed from service Waste Management Unit No. 004 without complying with the closure procedures of 30 TEX ADMIN. CODE § 335.8; and
 - b. 30 TEX. ADMIN. CODE § 335.6(b), by failing to update the Notice of Registration ("NOR") to accurately reflect waste management activities. Specifically, the Facility's NOR was not updated to reflect the current status of Waste Management Unit No. 004.

2. Respondent received notice of the violations on or about March 10, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here.
2. Respondent shall implement and complete a SEP as set forth in Section I, Paragraph 5. The amount of eleven thousand nine hundred twenty-five dollars (\$11,925.00) of the assessed administrative penalty is conditionally offset based on the condition that Respondent implement and complete a SEP pursuant to the terms and conditions contained in the SEP Agreement, as defined in Attachment A. Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty shall be discharged upon full, final, and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director. Administrative penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment. Checks shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP, Docket No. 2010-0424-IHW-E" to:

Litigation Division
Texas Commission on Environmental Quality
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

3. Respondent shall undertake the following technical requirements:
 - a. Within 60 days of the effective date of this Agreed Order, Respondent shall submit a closure plan, in accordance with 30 TEX. ADMIN. CODE § 335.8, for Waste Management Unit No. 004 for review, possible modification, and approval to:

Environmental Cleanup Section, MC 221
Remediation Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

with a copy to:

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

- b. Respondent shall respond completely and adequately to any request(s) for information from the TCEQ Environmental Cleanup Section to obtain approval of the closure plan. Such responses must be received by the TCEQ Environmental Cleanup Section within the time frame specified in the corresponding request or, if no time frame is specified, within thirty (30) days after the date on which the corresponding request was made;
- c. Within 15 days after approval of the closure plan, Respondent shall:
 - i. Update the Facility's NOR to reflect that Waste Management Unit No. 004 has been permanently removed from service; and
 - ii. Submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.c.i. The certification shall be notarized by a State of Texas Notary Public and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Joel Anderson, Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

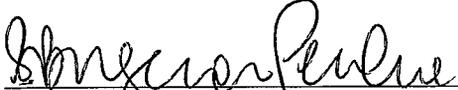
- 4. All relief not expressly granted in this Agreed Order is denied.

5. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. This Agreed Order issued by the Commission shall not be admissible against Respondent in a civil proceeding unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. 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.
10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

6/15/2011

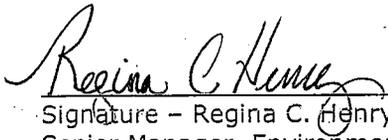
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Regina C. Henry
Senior Manager, Environmental
United States of America

3/29/2011

Date

Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP

Attachment A
Docket Number: 2010-0424-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Cemex Construction Materials South, LLC f/k/a Cemex Cement of Texas, LP
Penalty Amount:	Twenty-Three Thousand Eight Hundred Fifty Dollars (\$23,850)
SEP Offset Amount:	Eleven Thousand Nine Hundred Twenty-Five Dollars (\$11,925)
Type of SEP:	Pre-approved
Third-Party Recipient:	National Audubon Society
Project Name:	Mitchell Lake Project
Location of SEP:	Bexar County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset 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 the **National Audubon Society** for the *Mitchell Lake Project*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to restore the 600-acre upland habitat at the Mitchell Lake Audubon Center and Sanctuary by removing non-native, exotic plant species, and re-establishing native grasses, forbs, and woody vegetation. Native plants that will provide maximum benefit for the wildlife of Mitchell Lake will be reintroduced throughout the uplands.

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 performed 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

Restore native habitat that will benefit wildlife.

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:

National Audubon Society
Attention: Executive Director
Audubon Texas
2904 Swiss Avenue
Dallas, TX 75204

3. Records and Reporting

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

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
PO Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
PO Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of 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

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

7. Other SEPs by TCEQ or Other Agencies

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