

**Executive Summary – Enforcement Matter – Case No. 41140
Century Asphalt, Ltd.
RN102180437
Docket No. 2011-0224-AIR-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Rosenberg Asphalt Plant, 855 Highway 36 North, Rosenberg, Fort Bend County

Type of Operation:

Hot mix asphalt production plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: May 20, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$6,500

Amount Deferred for Expedited Settlement: \$1,300

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$2,600

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$2,600

Name of SEP: Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program

Compliance History Classifications:

Person/CN - Average

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41140
Century Asphalt, Ltd.
RN102180437
Docket No. 2011-0224-AIR-E

Investigation Information

Complaint Date(s): November 8, 2010, November 9, 2010, and November 10, 2010
Complaint Information: Complaints were received alleging heavy smoke coming from the Respondent's property. The smoke was drifting across Highway 36 North and had a burnt oil smell. The complainants also alleged that dust blows off the property and in some cases across Highway 36 North. One complainant alleged this has been occurring for four or five years; another alleged it has been occurring for the past two or three months. The smoke along with the dust causes them to cough and have breathing trouble. They also cannot enjoy the use of their property and the dust covers their vehicles.

Date(s) of Investigation: November 10-19, 2010

Date(s) of NOE(s): January 27, 2011

Violation Information

1. Failed to comply with the opacity limit of five percent averaged over a six-minute period. Specifically, on November 10, 2010, from 9:32 AM to 9:38 AM, the opacity was 53.9%; from 9:45 AM to 9:51 AM, the opacity was 61.4%; and from 11:21 AM to 11:27 AM, the opacity was 51.0% from the drum dryer fabric filter baghouse stack, Emissions Point Number ("EPN") AP-9 [30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit No. 34293, Special Conditions No. 5].
2. Failed to comply with the maximum hot mix temperature limit for Binder PG-64-22. Specifically, according to the records provided, from August 18, 2010 through the investigation date of November 10, 2010, the maximum allowable mix temperature of 335 degrees was exceeded at least once during each day of operation [30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit No. 34293, Special Conditions No. 6(C)].
3. Failed to maintain sufficient records in order to demonstrate compliance with Permit No. 34293. Specifically, records of hourly and annual production rates of all mix types; continuous temperature of the mix as monitored in the discharge section of the drum; quantity of fuel used in hot oil heaters; fuel analysis for the dryer and hot oil heaters; and records of daily road cleaning, daily application of road dust control, or daily road maintenance for dust control were not being kept on-site for the required rolling 24-month period [30 TEX. ADMIN. CODE § 116.115(b)(2)(E)(i), (b)(2)(E)(iv), and (c), TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit No. 34293, Special Conditions No. 16].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that:

- a. On December 15, 2010, the Respondent began operating the Plant on natural gas in order to ensure compliance with the allowable opacity limit of five percent averaged

Executive Summary – Enforcement Matter – Case No. 41140
Century Asphalt, Ltd.
RN102180437
Docket No. 2011-0224-AIR-E

over a six-minute period for the drum dryer fabric filter baghouse stack, EPN AP-9, and the allowable maximum hot mix temperature limit for Binder PG-64-22;

b. On January 26, 2011, multiple bags within the drum dryer fabric filter baghouse were replaced in order to maintain compliance with the allowable opacity limit of five percent averaged over a six-minute period for EPN AP-9; and

c. On or before February 7, 2011, the ownership of Permit No. 34293 was transferred to the Respondent, and the Respondent became the owner of the Plant.

Technical Requirements:

1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)

2) The Order will also require the Respondent to:

a. Within 30 days, implement measures and procedures to ensure compliance with the record keeping requirements, in accordance with Permit No. 34293, Special Conditions No. 16; and

b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision 2.a.

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

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Kimberly Morales, Enforcement Division, Enforcement Team 5, MC R-12, (713) 422-8938; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

TCEQ SEP Coordinator: Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732

Respondent: Aaron Savell, Environmental Health & Safety Manager, Century Asphalt, Ltd., P.O. Box 5370, Houston, Texas 77262

Respondent's Attorney: N/A

Attachment A
Docket Number: 2011-0224-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Century Asphalt, Ltd.
Payable Penalty Amount:	Five Thousand Two Hundred Dollars (\$5,200)
SEP Amount:	Two Thousand Six Hundred Dollars (\$2,600)
Type of SEP:	Pre-approved
Third-Party Recipient:	Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program
Location of SEP:	Texas Air Quality Control Region 216 – Houston-Galveston

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

The Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to **Houston-Galveston AERCO** for the **Clean Cities/Clean Vehicles Program** as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration’s (“FHWA”) Congestion Mitigation/Air Quality Funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other

Century Asphalt, Ltd.
Agreed Order - Attachment A

emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions of buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

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:

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

Century Asphalt, Ltd.
Agreed Order - Attachment A

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

ICEQ

DATES	Assigned	31-Jan-2011	Screening	9-Feb-2011	EPA Due	
	PCW	9-Mar-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Century Asphalt, Ltd.				
Reg. Ent. Ref. No.	RN102180437				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	41140	No. of Violations	3
Docket No.	2011-0224-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Kimberly Morales
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$7,000**

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: No adjustment for compliance history.

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** **\$500**

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

Total EB Amounts: \$34
Approx. Cost of Compliance: \$2,200
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$6,500**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$6,500**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$6,500**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$1,300**

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 **\$5,200**

Screening Date 9-Feb-2011

Docket No. 2011-0224-AIR-E

PCW

Respondent Century Asphalt, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 41140

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102180437

Media [Statute] Air

Enf. Coordinator Kimberly Morales

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%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 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 9-Feb-2011

Docket No. 2011-0224-AIR-E

PCW

Respondent Century Asphalt, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 41140

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102180437

Media [Statute] Air

Enf. Coordinator Kimberly Morales

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Tex. Health & Safety Code § 382.085(b) and Permit No. 34293, Special Conditions No. 5

Violation Description Failed to comply with the opacity limit of five percent averaged over a six-minute period. Specifically, on November 10, 2010, from 9:32 AM to 9:38 AM, the opacity was 53.9%; from 9:45 AM to 9:51 AM, the opacity was 61.4%; and from 11:21 AM to 11:27 AM, the opacity was 51.0% from the drum dryer fabric filter baghouse stack, Emissions Point Number AP-9.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			X	10%
	Potential				

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				0%

Matrix Notes Human health or the environment has been exposed to an insignificant amount of pollutants that do not exceed levels protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly 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 completed corrective actions on January 26, 2011, prior to the January 27, 2011 NOE.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$750

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

Economic Benefit Worksheet

Respondent Century Asphalt, Ltd.
Case ID No. 41140
Req. Ent. Reference No. RN102180437
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-Nov-2010	26-Jan-2011	0.21	\$11	n/a	\$11

Notes for DELAYED costs

Estimated expense to implement measures and procedures to ensure compliance with the allowable opacity limit. The Date Required is the first date of the investigation and the date that the violation was observed. The Final Date is the date that corrective actions were 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

\$11

Screening Date 9-Feb-2011

Docket No. 2011-0224-AIR-E

PCW

Respondent Century Asphalt, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 41140

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102180437

Media [Statute] Air

Enf. Coordinator Kimberly Morales

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Tex. Health & Safety Code § 382.085(b) and Permit No. 34293, Special Conditions No. 6(C)

Violation Description

Failed to comply with the maximum hot mix temperature limit for Binder PG-64-22. Specifically, according to the records provided, from August 18, 2010 through the investigation date of November 10, 2010, the maximum allowable mix temperature of 335 degrees was exceeded at least once during each day of operation.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to an insignificant amount of pollutants that do not exceed levels protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

84 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended based on the non-compliance with the temperature limit for Binder PG-64-22 from August 18, 2010 through November 10, 2010.

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 completed corrective actions on December 15, 2010, prior to the January 27, 2011 NOE.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$16

Violation Final Penalty Total \$750

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

Economic Benefit Worksheet

Respondent Century Asphalt, Ltd.
Case ID No. 41140
Req. Ent. Reference No. RN102180437
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
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	18-Aug-2010	15-Dec-2010	0.33	\$16	n/a	\$16

Notes for DELAYED costs

Estimated expense to implement measures and procedures to ensure compliance with the allowable maximum hot mix temperature limit for Binder PG-64-22. The Date Required is the first date that the violation occurred. The Final Date is the date that corrective actions were 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 \$16

Screening Date 9-Feb-2011
Respondent Century Asphalt, Ltd.
Case ID No. 41140
Reg. Ent. Reference No. RN102180437
Media [Statute] Air
Enf. Coordinator Kimberly Morales
Violation Number 3

Docket No. 2011-0224-AIR-E

PCW

Policy Revision 2 (September 2002)
 PCW Revision October 30, 2008

Rule Cite(s) 30 Tex. Admin. Code § 116.115(b)(2)(E)(i), (b)(2)(E)(iv), and (c), Tex. Health & Safety Code § 382.085(b) and Permit No. 34293, Special Conditions No. 16

Violation Description Failed to maintain sufficient records in order to demonstrate compliance with Permit No. 34293. Specifically, records of hourly and annual production rates of all mix types; continuous temperature of the mix as monitored in the discharge section of the drum; quantity of fuel used in hot oil heaters; fuel analysis for the dryer and hot oil heaters; and records of daily road cleaning, daily application of road dust control, or daily road maintenance for dust control were not being kept on-site for the required rolling 24-month period.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes

Greater than 70% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$5,000

Five single events are recommended based on the five sets of records that were not being kept on-site.

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 \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent Century Asphalt, Ltd.
Case ID No. 41140
Rea. Ent. Reference No. RN102180437
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	\$200	10-Nov-2010	31-Jul-2011	0.72	\$7	n/a	\$7
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 expense to implement measures and procedures to ensure compliance with record keeping requirements. The Date Required is the first date of the investigation. The Final Date is the date that corrective actions are estimated 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 \$200

TOTAL \$7

Compliance History

Customer/Respondent/Owner-Operator: CN602834517 Century Asphalt, Ltd. Classification: AVERAGE Rating: 2.29

Regulated Entity: RN102180437 ROSENBERG ASPHALT PLANT Classification: HIGH Site Rating: 0.00

ID Number(s):

AIR NEW SOURCE PERMITS	AFS NUM	4877700670
AIR NEW SOURCE PERMITS	REGISTRATION	30540
AIR NEW SOURCE PERMITS	PERMIT	34293
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	930540G
AIR NEW SOURCE PERMITS	REGISTRATION	77045
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	930540G

Location: 855 HIGHWAY 36 N, ROSENBERG, TX, 77471

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: March 09, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 09, 2006 to March 09, 2011

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

Name: Kimberly Morales Phone: (713) 422-8938

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.)
07/21/2009 (760923)
- 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
CENTURY ASPHALT, LTD.
RN102180437**

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

AGREED ORDER DOCKET NO. 2011-0224-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 Century Asphalt, 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 operates a hot mix asphalt production plant at 855 Highway 36 North in Rosenberg, Fort Bend 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 February 1, 2011.
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 Six Thousand Five Hundred Dollars (\$6,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Six Hundred Dollars (\$2,600)

of the administrative penalty and One Thousand Three Hundred Dollars (\$1,300) 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. Two Thousand Six Hundred Dollars (\$2,600) 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:
 - a. On December 15, 2010, the Respondent began operating the Plant on natural gas in order to ensure compliance with the allowable opacity limit of five percent averaged over a six-minute period for the drum dryer fabric filter baghouse stack, Emissions Point Number ("EPN") AP-9, and the allowable maximum hot mix temperature limit for Binder PG-64-22;
 - b. On January 26, 2011, multiple bags within the drum dryer fabric filter baghouse were replaced in order to maintain compliance with the allowable opacity limit of five percent averaged over a six-minute period for EPN AP-9; and
 - c. On or before February 7, 2011, the ownership of Permit No. 34293 was transferred to the Respondent, and the Respondent became the owner of the Plant.
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 the operator of the Plant, the Respondent is alleged to have:

1. Failed to comply with the opacity limit of five percent averaged over a six-minute period, in violation of 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit No. 34293, Special Conditions No. 5, as documented during an investigation conducted from November 10, 2010 to November 19, 2010. Specifically, on November 10, 2010, from 9:32 AM to 9:38 AM, the opacity was 53.9%; from 9:45 AM to 9:51 AM, the opacity was 61.4%; and from 11:21 AM to 11:27 AM, the opacity was 51.0% from the drum dryer fabric filter baghouse stack, EPN AP-9.
2. Failed to comply with the maximum hot mix temperature limit for Binder PG-64-22, in violation of 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit No. 34293, Special Conditions No. 6(C), as documented during an investigation conducted from November 10, 2010 to November 19, 2010. Specifically, according to the records provided, from August 18, 2010 through the investigation date of November 10, 2010, the maximum allowable mix temperature of 335 degrees was exceeded at least once during each day of operation.
3. Failed to maintain sufficient records in order to demonstrate compliance with Permit No. 34293, in violation of 30 TEX. ADMIN. CODE § 116.115(b)(2)(E)(i), (b)(2)(E)(iv), and (c), TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit No. 34293, Special Conditions No. 16, as documented during an investigation conducted from November 10, 2010 to November 19, 2010. Specifically, records of hourly and annual production rates of all mix types; continuous temperature of the mix as monitored in the discharge section of the drum; quantity of fuel used in hot oil heaters; fuel analysis for the dryer and hot oil heaters; and records of daily road cleaning, daily application of road dust control, or daily road maintenance for dust control were not being kept on-site for the required rolling 24-month period.

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: Century Asphalt, Ltd., Docket No. 2011-0224-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, Two Thousand Six Hundred Dollars (\$2,600) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement measures and procedures to ensure compliance with the record keeping requirements, in accordance with Permit No. 34293, Special Conditions No. 16; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and contain the following 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

Date 6/17/2011

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

Date 04/11/11

Aaron Savell

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

Title EHSM

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: 2011-0224-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Century Asphalt, Ltd.
Payable Penalty Amount:	Five Thousand Two Hundred Dollars (\$5,200)
SEP Amount:	Two Thousand Six Hundred Dollars (\$2,600)
Type of SEP:	Pre-approved
Third-Party Recipient:	Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program
Location of SEP:	Texas Air Quality Control Region 216 – Houston-Galveston

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

The Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to **Houston-Galveston AERCO** for the **Clean Cities/Clean Vehicles Program** as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration’s (“FHWA”) Congestion Mitigation/Air Quality Funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other

Century Asphalt, Ltd.
Agreed Order - Attachment A

emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions of buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

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:

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

Century Asphalt, Ltd.
Agreed Order - Attachment A

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.