

Commissioner, Indiana Department of Environmental Management,
Case No. 2004-13749-A

v.

Calcar Quarries, Inc.
Paoli, Orange County, Indiana
2010 OEA 208, (05-A-E-3652)

OFFICIAL SHORT CITATION NAME: When referring to 2010 OEA 208 cite this case as
Calcar Quarries, Inc., 2010 OEA 208.

TOPICS:

batch mix dryer	Commissioner's Order (CO)
bag house	vent
emissions	hole
stack test	grate
Compliance Emission Test Report	base civil penalty
normal operating conditions	potential for harm
sampling runs	extent of deviation
monitor	aggravating or mitigating factors
dryer/burner process	Permit Condition C.20
bag house inlet temperature	Permit Condition D.3
records	Permit Condition D.4
PM-10	Permit Condition D.14(f)
Total Particulate Concentration	326 IAC 12
Grains per Dry Standard Cubic Foot	40 CFR 60.93, Subpart I
Preventative Maintenance Plan	I.C. § 13-30-3-4
advice of counsel	I.C. § 13-30-3-5
Notice of Violation (NOV)	
Agreed Order (AO)	
Federally Enforceable State Operating Permit (FESOP)	
Civil penalty non-rule policy document 99-0002-NPD	

PRESIDING JUDGE:

Mary L. Davidsen

PARTY REPRESENTATIVES:

IDEM: Justin D. Barrett, Esq.
Respondent: Mark E. Shere, Esq.

ORDER ISSUED:

November 29, 2010

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

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2. The Site includes a bag house to filter emissions. Per Mr. Meadows, “[j]ust over five years ago (from November 17, 2003, Calcar) replaced our old wet-wash air pollution control system with a bag house to ensure that we were in compliance with the then-new FESOP permitting system. We purchased a (used) oversized bag house to ensure we achieved compliance and remained there. Our first stack test results showed that we were very successful.” *Complainant’s Ex. 4, November 17, 2003 Report Cover letter by Jerry Meadows*. The bag house was purchased from a previous user.
3. On August 18, 2003, the Stack Test Group, Inc. conducted a stack test at the Site which was observed by Steven Friend, Environmental Engineer for IDEM’s Office of Air Quality (“OAQ”). *Complainant’s Ex. 1, IDEM Test Observation Report*.
4. The test was performed as part of the annual compliance requirements for Calcar’s Permit. *Complainant’s Ex. 3, Permit*.
5. On the August 18, 2003 test date, IDEM’s Mr. Friend’s testimony provided substantial evidence that he observed the stack test as required. Mr. Friend arrived at the Site at approximately 7:30 A.M, and spoke with Calcar’s facility operator to assure that the facility would operate at or near production capacity during the tests. Calcar’s operator told Mr. Friend that the facility’s configuration conformed to normal operating conditions. Mr. Friend inspected the bag house and did not notice nor detect any conditions (damage, etc.) that he believed would affect the stack test.
6. Three employees from Calcar’s testing contractor, Stack Test Group, arrived at approximate 8:10 A.M. As Mr. Friend observed, the Stack Test Group employees pulled the testing equipment to an area on top of the bag house to the stack test area. Mr. Friend was present on top of the bag house before and during the stack test.
7. Prior to the beginning of the test, neither Steven Friend, nor the Stack Test Group personnel reported anything out of the ordinary or unusual about the condition of the bag house. *Complainant’s Ex. 2, Report of August 18, 2003 Stack Test (handwritten notations stricken)*.
8. Three tests were run by the Stack Test Group on August 18, 2003. Mr. Friend was present during the first two sampling runs, in accord with standard operating procedure for IDEM to observe two of three sampling runs. All testing followed the guidelines of U.S. EPA’s Reference Methods 1 through 5 and 202. *Complainant’s Exs. 1, 2*. The first of three sampling runs began at approximately 10:35 A.M. The second sampling run began at approximately 12:50 P.M. As a result of the first two sampling runs, Mr. Friend concluded that there were no testing or production problems. During the testing, neither Mr. Friend nor the Stack Test Group personnel reported anything out of the ordinary or unusual about the condition of the bag house.

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9. Calcar's Permit condition D.14(f) required Calcar to monitor the dryer/burner process stack and record the bag house inlet temperature. Calcar contested IDEM's claim that Calcar did not have these records present during the August 18, 2003 stack test. Calcar's president, Jerry Meadows, testified at the final hearing that Calcar had not submitted records for the last four quarters, since it petitioned for administrative review, based upon advice of Calcar's legal counsel.
10. On October 23, 2003 Calcar received the Compliance Emission Test Report ("Report") from the August 18, 2003 stack test. *Complainant's Ex. 2*. IDEM received the Report on or about November 17, 2003. *Complainant's Ex. 2*.
11. The Report indicated that the average Total Particulate Concentration for the three tests was .1557 Grains per Dry Standard Cubic Foot. The average PM-10 emission for the three tests was .18 pounds per ton of asphalt mix. *Complainant's Ex. 2*. The Permit limits Total Particulate Concentration to .03 Grains per Dry Standard Cubic Foot, and PM-10 emissions to 0.13 pounds per ton of asphalt mix. *Complainant's Ex. 3*, pages 29-30. The stack test results for total particulate concentration exceeded the permitted amount by 419%. The stack test results for PM-10 emissions exceeded the permitted amount by 18%.
12. Between the August 18, 2003 stack test and receipt of the report on October 23, 2003, Calcar conducted an inspection of its bag house, "immediately" replaced "a number of bags which had become unserviceable since our last inspection" and "replaced all other bags of questionable serviceability". *Complainant's Ex. 4*. Calcar revised its Preventative Maintenance Plan to include inspection of all bags, replacement of a third of the bags each year. *Id.* Calcar decided to change all the bags in the bag house by winter of 2004-2005 in order to "have a clear starting point". *Id.*
13. Calcar sent the Report to IDEM, accompanied by a letter detailing Calcar's responsive actions and a request for an extension of time to conduct a follow up stack test. *Complainant's Ex. 4*.
14. IDEM did not respond to Calcar's request for an extension of a follow-up stack test. On April 13, 2004, IDEM issued a Notice of Violation ("NOV") pursuant to I.C. § 13-30-3-3. The NOV included an offer to enter into an Agreed Order containing actions required to correct the violations. Settlement conferences were held in May, August, and September of 2004, but the parties did not enter into an Agreed Order.
15. Prior to conducting its second stack test on June 11, 2004, Calcar inspected the bag house again and noted that the bag house had been altered by its prior owner, before the August 18, 2003 stack test, via a grate-covered hole ("vent") connected to the clean side of the bag house. *Calcar's Ex. A, letter from counsel with photographs*. The vent appeared to be a 13-

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inch by 19-inch rectangle in the side of the bag house, near the top of the building. *Id.* The vent was

on the side of the bag house next to a conveyer/dump with a significant amount of fugitive emissions present during the first test, per the Stack Test Group's Bill Byczynski's June 24, 2004 letter attached to Calcar's Petition for Review. Mr. Byczynski's letter presented substantial evidence that the vent had a high negative pressure which could have pulled in fugitive particles and passed them through the stack unfiltered, possibly affecting the results of the original testing. *Respondent's Ex. A.*

16. Substantial evidence presented in testimony from Calcar representatives, IDEM staff, and employees of the Stack Test Group shows that the vent was present and open during regular and ordinary operating condition of the bag house after its installation, and during the August 18, 2003 stack test. Calcar eliminated the vent (and replaced bags) prior to the second run of stack tests on June 11, 2004.
17. On June 11, 2004, the second run of three stack tests was conducted by Stack Test Group under maximum operating capacity and normal bag house conditions. The June 11, 2004 test was observed by IDEM's Dave Harrison. The test returned an average Particulate Concentration of .0077 Grains per Dry Standard Cubic Foot, and a PM-10 average concentration of .0095 Grains per Dry Standard Cubic Foot. *Respondent's Ex. A.* The Permit limits Total Particulate Concentration to .03 Grains per Dry Standard Cubic Foot, and PM-10 emissions to 0.13 pounds per ton of asphalt mix. *Complainant's Ex. 3*, pages 29-30. The June 11, 2004 results were below their respective limits as expressed in the Permit.
18. On December 19, 2005, the Commissioner issued an Order requiring the Respondent to comply with 326 IAC 12 and Permit conditions D.3, D.4, and D.14(f). The Order required Calcar to amend their Preventative Maintenance Plan, submit copies of bag house inlet temperature records, and pay a civil penalty of \$15,500 based upon the August 18, 2003 stack test.
19. Between the time when the August 18, 2003 stack test was conducted and subsequently reported on October 23, 2003, Calcar revised its Preventative Maintenance Plan to include inspection of all bags, replacement of a third of the bags each year. After IDEM issued its Commissioner's Order, Mr. Meadows testified that Calcar did not submit copies of bag house inlet temperature records, based on advice of Calcar's legal counsel.
20. On December 28, 2005, Calcar timely filed a Petition for Administrative Review pursuant to 315 IAC 1-3-1.

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CONCLUSIONS OF LAW

1. The Indiana Department of Environmental Management (“IDEM”) is authorized to implement and enforce specified Indiana environmental laws, and rules promulgated relevant to those laws, per I.C. § 13-13, *et seq.* The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of IDEM and the parties to this controversy pursuant to I.C. § 4-21.5-7, *et seq.*
2. This is a Final Order issued pursuant to I.C. § 4-21.5-3-27. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
3. This Court must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993), *Jennings Water, Inc. v. Office of Env'tl. Adjudication*, 909 N.E.2d 1020, 1025 (Ind. Ct. App. 2009). Findings of fact must be based exclusively on the evidence presented to the Environmental Law Judge (“ELJ”), and deference to the agency’s initial factual determination is not allowed. *Id.*; I.C. § 4-21.5-3-27(d). “The ELJ . . . serves as the trier of fact in an administrative hearing and a *de novo* review at that level is necessary. *Indiana Department of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100, 103 (Ind. 1993). The ELJ does not give deference to the initial determination of the agency.” *Indiana-Kentucky Elec. Corp v. Comm’r, Ind. Dep’t of Env’tl. Mgmt.*, 820 N.E.2d 771 (Ind. Ct. App. 2005). “*De novo* review” means that “all issues are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.” *Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind. Ct. App. 1981).
4. Calcar argues that OEA is required to base its factual findings on a preponderance of the evidence. After a review of the case law cited by Calcar, the Court concludes that OEA is required to base its factual findings on substantial evidence. *Huffman v. Office of Env’tl. Adjud.*, 811 N.E.2d 806, 809 (Ind., June 30, 2004)(appeal of OEA review of NPDES permit); *see also*, I.C. § 4-21.5-3-27(d). OEA is authorized “to make a determination from the affidavits . . . pleadings or evidence.” I.C. § 4-21.5-3-23(b). The applicable standard of proof generally has been described as a continuum with levels ranging from a “preponderance of the evidence test” to a “beyond a reasonable doubt” test. The “clear and convincing evidence” test is the intermediate standard, although many varying descriptions may be associated with the definition of this intermediate test. *Matter of Moore*, 453 N.E.2d 971, 972, n. 2. (Ind. 1983). The “substantial evidence” standard requires a lower burden of proof than the preponderance test, yet more than the scintilla of the evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993). *GasAmerica #47*, 2004 OEA 123, 129. *See also Blue River Valley*, 2005 OEA 1, 11-12, *Marathon Point Service and Winamac Service*, 2005 OEA 26, 41.

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5. IDEM relied upon results from the August 18, 2003 stack test to allege that Calcar's measured emissions violated Calcar's Permit and related laws. Calcar asserts that the August 18, 2003 stack test was invalid because unfiltered fugitive emissions were passed through the stack as a result of the overlooked vent in the bag house. In order to prove its argument that the vent in the bag house was the cause of the failed test, Respondent Calcar was required to show by substantial evidence that the vent was the actual cause of the failed test. The vent was not a temporary anomaly present on the day stack testing was conducted. The vent had been present since Calcar purchased the used bag house. Per Calcar's president, in November, 2003, "[w]e purchased an oversized bag house to ensure we achieved compliance and remained there. Our first stack test results showed that we were very successful. We expected the same this time around, but were disappointed". *Complainant's Ex. 4, page 2.* It is reasonable to conclude that the vent should have impacted the first test referenced by Mr. Meadows. Calcar failed to prove by substantial evidence that the bag house vent caused the failed stack test.
6. Calcar relied upon Bill Byczynski's letter referencing a (vent) hole in the bag house with "high negative static pressure associated with it," which "could have pulled in enough fugitive emissions during the test to cause the elevated emissions associated with the first test." *Respondent's Ex. A* (emphasis added). The possibility that a vent with high negative static pressure could pull in fugitive emissions through the bag house does not present substantial evidence that the vent *did* pull in fugitive emissions in quantities sufficient enough to result in the failure of the stack test.
7. Per Calcar's facility operator's representations to IDEM's Mr. Friend, the facility operated at or near production capacity during the August 18, 2003 tests. Calcar's operator told Mr. Friend that the facility's configuration conformed to normal operating conditions. The bag house, including its vent, were part of the facility's normal operating conditions. By substantial evidence, the August 18, 2003 stack test was not invalidated by operating conditions during the stack test.
8. Sealing the bag house vent and the subsequent successful test does not present substantial evidence that the vent was the cause of the failed test. Between the August 18, 2003 stack test and the June 11, 2004 stack test, Calcar took additional measures to improve the functioning of the bag house. Calcar replaced unserviceable bags and questionable bags identified after the failed test and revised its Preventative Maintenance Plan to replace all the bags in the bag house by winter of 2004-05. *Complainant's Ex. 4.*
9. With all of the variables changed between the two stack tests, along with the sealing of the vent in the bag house, Calcar did not demonstrate that sealing the vent in the bag house was the sole measure resulting in the compliant June 11, 2004 stack test. By substantial evidence, the results of August 18, 2003 stack test were valid.

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10. Based upon the August 18, 2003 stack test, IDEM alleged that the Respondent violated condition D.3 of its Permit which states in relevant part:

Pursuant to 326 IAC 2-2, emissions of particulate matter less than 10 microns in diameter (PM-10) from the dryer/mixer process exhaust system shall not exceed 0.13 pounds of PM-10 per ton of asphalt mix, including both filterable and condensable fractions. Compliance with this limit is required by 326 IAC 2-8-4. The emissions of particulate matter less than 10 microns in diameter will be less than the minimum required under Part 70 rules (326 IAC 2-7); therefore, the Part 70 requirements will not apply.

11. During the August 18, 2003 stack test, average PM-10 emissions from the dryer process were 0.18 pounds of PM-10 per ton of asphalt mix. By substantial evidence, Calcar violated permit condition D.3 of its Permit.

12. IDEM further alleges that Respondent violated condition D.4 of its Permit which states in relevant part:

Drum Dryer/Burner Process Stack particulate emission (PM) in the bag house gas stream, excluding water and steam vapors, shall not exceed 0.03 grains per dry standard cubic foot (gr/dscf). Compliance with this grain loading limit satisfies the grain loading limit of the New Source Performance Standards, 326 IAC 12 (40 CFR 60.90 to 60.93, Subpart I).

40 CFR 60.90-60.93, Subpart I, states in relevant part:

[N]o owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility any gases which:

(1) Contain particulate matter in excess of 90 mg/dscm (0.04 gr/dscf).

13. During the August 13, 2003 stack test, average PM emissions from the drum dryer/burner process were 0.155 grains per dry standard cubic foot. By substantial evidence, Calcar violated both permit condition D.4 of its Permit and 326 IAC 12, which incorporates by reference 40 CFR 60.90 to 60.93, Subpart I.

14. IDEM also alleges that the Respondent violated condition D.14(f) of its Permit which states in relevant part:

To document compliance with Condition D.11 Monitoring Bag house on the Dryer/Burner Process Stack, the inlet temperature to the bag house shall be recorded once per shift while the dryer /burner process is in operation.

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15. Section C.20 of the Permit requires that “[r]ecords shall be retained for a period of at least five (5) years from the date of monitoring sample, measurement, report, or application... If the Commissioner makes a request for records to the Permittee, the Permittee shall furnish the records to the commissioner within a reasonable time.” *Complainant’s Ex. 3*, page 25 of 47.
16. Calcar does not dispute that it did not provide inlet temperature records described in Permit condition D.14(f). Calcar asserts that its timely appeal of IDEM’s December 19, 2005 Commissioner’s Order stayed Calcar’s obligation to provide the records.
17. I.C. § 13-30-3-5(a) provides that a Commissioner’s Order takes effect 20 days after the alleged violator receives notice, unless the alleged violator requests administrative review. Neither I.C. § 13-30-3-5(a), nor other provisions of Indiana law or advice of an alleged violator’s counsel, relieve a permittee who is an alleged violator from complying with its permit obligations when review of a Commissioner’s Order addresses permit conditions. Even though Calcar sought review of an IDEM’s Commissioner’s Order citing Calcar for failure to comply with permit conditions C.20 and D.14(f), all permit conditions remained in effect. By substantial evidence, Calcar violated permit condition D.14(f) by failing to provide the inlet temperature records to IDEM, when requested per condition C.20.
18. Calcar is subject to civil penalties for violating Indiana’s environmental management laws and air pollution control laws. “Any person who violates any provision of environmental management laws [or] air pollution control laws... is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of any violation.” I.C. § 13-30-4-1. As concluded above, Calcar violated Indiana environmental management laws and air pollution control laws. Consequently, Calcar is subject to civil penalties for these violations.
19. In sum, the Commissioner’s Order was issued to Calcar for exceeding permitted air quality emissions and failure to provide inlet temperature records, as required by permit. To calculate the amount of civil penalty, IDEM testimony established that IDEM used its Civil Penalty Policy Non-rule Policy Document¹ when calculating the penalty of \$15,500 described in the Commissioner’s Order. IDEM’s civil penalty policy is a reasonable means of determining the civil penalty because it allows for predictable, consistent and fair calculation of penalties. *Commissioner, Ind. Dep’t of Env’tl Mgmt. v. Carson Stripping, Inc. and Carson Laser, Inc.*, 2004 OEA 14, 26, citing *Ind. Dep’t of Env’tl Mgmt. v. Schnippel Construction, Inc.*, 778 N.E.2d 407, 416 (Ind. Ct. App. 2002), *trans. den.* (affirming an administrative law judge’s penalty calculation because the calculation was based on IDEM’s written penalty policy). There is no dispute that the penalty IDEM sought was less than the statutory

¹ IDEM’s Civil Penalty Policy is a non-rule document, ID No. Enforcement 99-0002-NPD, originally adopted on April 5, 1999 in accordance with I.C. § 13-14-1-11.5.

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maximum of \$25,000 per day or whether IDEM calculated it according to established IDEM policy. *Id.*

20. The record in this cause contains substantial evidence for the Court to apply the Civil Penalty Policy to determine the appropriate penalty in this matter. According to this policy, a civil penalty is calculated by “(1) determining a base civil penalty dependent on the severity and duration of the violation, (2) adjusting the penalty for special factors and circumstances, and (3) considering the economic benefit of noncompliance.” The base civil penalty is calculated taking into account two factors: (1) the potential for harm and (2) the extent of deviation.
21. The policy states that the potential for harm may be determined by considering “the likelihood and degree of exposure of person or the environment to pollution” or “the degree of adverse effect of noncompliance on statutory or regulatory purposes or procedures for implementing the program.” There are several factors that may be considered in determining the likelihood of exposure. These are the toxicity and amount of the pollutant, the sensitivity of the human population or environment exposed to the pollutant, the amount of time exposure occurs, and the size of the violator.
22. For the emissions-related violations of permit conditions D.3 and D.4, and of 326 IAC 12, the potential for harm is moderate. Particulate matter emissions in excess of regulated amounts may cause, if not aggravate, detrimental respiratory conditions such as asthma, and are included in calculations to determine whether an area is or is not in attainment for PSDs.
23. The second determination for the violations of permit conditions D.3 and D.4, and of 326 IAC 12 is the extent of deviation. During the August 18, 2003 stack test, 0.18 lb/ton of asphalt were detected as PM-10, exceeding the amount allowed in the Permit by 38%. 0.1557 Grains Per Dry Standard Cubic Feet of Particulate Matter were detected, exceeding the permitted amount by 419%, and the amount allowed under 326 IAC 12 by almost 290%. The emissions detected during the August 18, 2003 Stack Test were a major deviation from authorized amounts.
24. According to the Civil Penalty Policy, a value is selected from a selected cell “is left to the judgment of enforcement staff and is based on the individual circumstances of each case.” On *de novo* review of a case before the OEA, such judgment is to be exercised by the presiding environmental law judge (“ELJ”), to determine the base penalty. The range for a Moderate/Major violation is \$10,000 to \$12,500. In this case, the ELJ finds that the lowest end of the range for a Moderate/Major violation is appropriate, resulting in a penalty of Ten Thousand Dollars (\$10,000.00) per violation day. IDEM based its penalty calculation on the assumption that one violation day was appropriate, an assumption supported by substantial evidence. The base civil penalty for the emissions-related violations is Ten Thousand Dollars (\$10,000.00).

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25. The base civil penalty value may be adjusted by aggravating or mitigating factors. When Calcar obtained the bag house, it installed a size of bag house calculated for excess capacity, so as to avoid emissions-based violations. After the August 18, 2003 stack test, Calcar conducted bag house inspections, replaced the bags, closed the bag house vent, amended its preventative maintenance plan, and conducted a follow up stack test on June 11, 2004. These efforts provide substantial evidence that Calcar's diligence in detecting and eliminating the cause of further excess emissions act as mitigation factor for imposition of civil penalty. The mitigating factor of "Quick Settlement" did not occur, as Respondent did not execute a settlement. No evidence quantified an economic benefit inuring to Respondent. Therefore, the ELJ finds mitigating factors, and no aggravating factors, to consider.
26. Respondent Calcar is assessed a civil penalty of Eight Thousand Dollars (\$8,000.) for violations of permit conditions D.3 and D.4, and of 326 IAC 12.
27. For the violations of permit failure to comply with permit conditions C.20 and D.14(f), condition D.14(f), failing to provide the bag house inlet temperature records to IDEM, when requested per condition C.20, the potential for harm is minor. The failure to report did not lead to an increase in pollutant emissions.
28. For violations of the permit conditions requiring bag house inlet temperature records to be provided to IDEM, the extent of deviation is major. Calcar's testimony at final hearing provided unrefuted substantial evidence that Calcar refused to comply with this requirement of its permit for more than five years. This permit requirement is not stayed by Calcar's petitioning for administrative review of an IDEM Commissioner's Order, or by advice of Calcar's counsel. The regulatory purposes or procedures for implementing the program were disregarded, and resulted in investigatory and litigation burdens to the taxpayers via IDEM.
29. The Civil Penalty Policy's range for a Minor/Major violation is \$3,500 to \$5,000. In this case, the ELJ finds that the middle of the range for a Minor/Major violation is appropriate, resulting in a penalty of Four Thousand Dollars (\$4,000.00) per violation day. IDEM based its penalty calculation on the assumption that one violation day was appropriate, an assumption supported by substantial evidence. The ELJ finds no evidence of either aggravating or mitigating factors. The base civil penalty for the failure to provide IDEM with permit-required bag house inlet temperature records Four Thousand Dollars (\$4,000.00).
30. Respondent Calcar Quarries is assessed a total civil penalty of Twelve Thousand Dollars (\$12,000) for the violations of 326 IAC 12 and Permit conditions D.3, D.4, and D.14(f), and the December 15, 2005 Commissioner's Order is sustained.

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FINAL ORDER

For all of the foregoing reasons, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Respondent, Calcar Quarries, Inc., violated 326 IAC 12 and conditions D.3, D.4, and D.14(f) of General Federally Enforceable State Operating Permit No. 117-14095-03220. Respondent, Calcar Quarries, Inc., is subject to civil penalties of Twelve Thousand Dollars (\$12,000) for violating Indiana's environmental management laws and air pollution control laws. Except for the amount of civil penalty, the Indiana Department of Environmental Management's December 15, 2005 Commissioner's Order is **AFFIRMED**.

You are hereby further notified that pursuant to provisions of I.C. § 4-21.5-7-5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5. Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 29th day of November, 2010 in Indianapolis, IN.

Hon. Mary L. Davidsen
Chief Environmental Law Judge