

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Riverside Cement Company ("Riverside Cement" or "TXI/RCC") and the South Coast Air Quality Management District ("District" or "SCAQMD") (collectively referred to as "Parties" or individually as "Party").

RECITALS

- A.** The District is a political subdivision of the State of California created by the legislature to exercise responsibility for comprehensive air pollution control within Orange County and designated portions of Los Angeles, Riverside, and San Bernardino Counties, with its headquarters located at 21865 Copley Drive, Diamond Bar, California 91765.
- B.** Riverside Cement is a California general partnership that owns and operates the TXI Riverside Cement Plant ("Facility") (Facility ID No. 800182), a cement manufacturing facility located at 1500 Rubidoux Blvd., Riverside, California 92509 [(951)774-2500].
- C.** The Facility is within the District's jurisdiction and subject to the District's regulations. The District has issued RECLAIM/Title V facility permits to operate ("Permits") to Riverside Cement for the Facility.
- D.** The Facility is subject to District Rules 403, 1156, and 3002, among other rules.
- E.** The District has issued the following Notices of Violation ("NOVs") to Riverside Cement, alleging violations of District Rules 403, 1156, and 3002 at the Facility:

<u>NOV No.</u>	<u>Date of NOV</u>	<u>Date of Alleged Violation</u>	<u>District Rules Allegedly Violated</u>
P49799	April 18, 2008	April 12, 2008	4 counts of 1156(d)(1)(C) ("Creating or allowing visible dust plumes exceeding 100 feet in length") 1 count of 403(d)(1)(A) ("Causing or allowing fugitive dust created from operations at this facility to remain visible in the atmosphere beyond the facility's property line") 1 count of 1156(d)(5)(E) ("operator shall apply [] dust suppressants during any material loading or unloading to/from open piles" 2 counts of 3002(c)(1)-permit conditions #2 and #4 ("maintain all equipment" and equipment shall not be used unless vented to air pollution control equipment which is in full use")

P49800	April 25, 2008	April 14, 2008	4 counts of 1156(d)(1)(C) ("Creating or allowing visible dust plumes exceeding 100 feet in length") 2 counts of 1156(d)(5)(E) ("operator shall apply [] dust suppressants during any material loading or unloading to/from open piles")
P50568	April 25, 2008	April 20, 2008	1 count of 1156(d)(5)(E) ("operator shall apply [] dust suppressants during any material loading or unloading to/from open piles"); 1 count of 403(d)(2) (failure to utilize best available control measures)
P10403	June 8, 2008	June 7, 2008	1 count of 1156(d)(1)(C) ("Creating or allowing visible dust plumes exceeding 100 feet in length")

F. The Parties enter into this Agreement with the intention of settling any civil penalties authorized by California Health and Safety Code Section 42400 et seq., for violations of the above-specified rules for the cited dates of violations on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

Covering Open Clinker Storage Piles

1. On and after the effective date of this agreement, TXI/RCC shall not add any gray or white clinker to the existing gray clinker open storage piles or form any new open storage piles.
2. TXI/RCC shall reclaim all existing gray clinker storage piles that can be processed by the Reclaimer (Phase I) by August 15, 2008. A plan to clean up all remaining materials to minimize dust emissions (Phase II) shall be submitted to the District by July 15, 2008 for approval. No clean up of the remaining gray clinker material shall be commenced until the Phase II clean up plan is approved. Clean up shall be completed by November 30, 2008, or within 60 days after the District approves the Phase II clean up plan, whichever is later.
3. Within 30 days of the effective date of this agreement, TXI/RCC shall completely cover, with an impermeable cover approved in advance by the District, all gray clinker material that exists in open storage piles located in Bays A, B, C, G, and H and anywhere else on site at this facility. Prior to covering each pile, sufficient dust suppressant shall be applied to create a crust at least 1" deep, verified by sampling at locations along the length of the pile separated by a maximum distance of 30 feet. Upon verification that a pile has been so stabilized, an impermeable cover approved in advance by the District shall be placed over the pile and secured in place such that all material in the pile is completely contained between the surface of the storage bay beneath the pile and the cover of the pile. All piles shall remain covered in this manner until such time as the material contained within is to be reclaimed.

Reclaiming Clinker from Existing Covered Storage Piles

4. When any clinker material is to be reclaimed from an existing covered storage pile, the pile shall remain completely covered except during active reclaiming, when an area extending no more than 40 feet from the end of the pile to be reclaimed may be exposed. If active reclaiming ceases or is reasonably expected to cease for a period of 4 hours or more, the exposed pile shall be watered and completely covered until active reclaiming resumes.
5. Except as specified in Paragraph 8, the clinker stored in open storage piles shall only be reclaimed using Rotary Reclaimer #2 (Device #D171; hereinafter "Reclaimer"). This Reclaimer shall be equipped with a water spray system that delivers water to the entire surface of exposed clinker during active reclaiming through a series of at least (19) nozzles. Said nozzles shall be installed and positioned to spray the entire open surface of the clinker pile facing the Reclaimer, from the top to the bottom of the pile, such that all clinker surface material to be removed by the Reclaimer is moist prior to and during its removal and remains moist as the material is dropped from the bucket to the conveyor inside the Reclaimer.
6. The conveyor fed by the Reclaimer has been equipped with a belt scraper which shall be maintained and operated to restrict gray clinker material from coming off the bottom return belt and falling to the ground.
7. The throughput rate of clinker material processed by the Reclaimer shall not exceed 3,000 tons of material per day.
8. Except as otherwise specified in this paragraph, at no time shall any front-end loader, crusher, or junior reclaimer be used to remove, process or transport clinker material from existing storage piles unless approved in writing by the District. A front-end loader may be used to consolidate moistened gray clinker into the existing storage piles so that it may be reclaimed during Phase I. Sufficient water or other dust suppressants shall be applied during this process so that wind blown fugitive dust from the consolidating activities is not visible for a distance of more than 50 feet from the point of origin. TXI/RCC will address the Phase II use of front-end loaders in its proposed Phase II plan.
9. No gray clinker material shall be transported to the TXI/RCC site from other facilities until all clinker from storage piles has been completely reclaimed and cleaned-up under Phase I, without prior approval of the District. TXI/RCC shall use imported gray clinker only as necessary to meet its ASTM specifications. Given the moisture applied to the existing gray clinker stock piles, gray clinker is imported and blended at a ratio of approximately 1 to 1 with the gray clinker stock piles to meet ASTM product specifications. Riverside may import up to 420 trucks of gray clinker per week for this purpose. If because of maintenance on the Reclaimer, halting Reclaimer operations for high winds; or for any other reason TXI/RCC needs to import more than 420 trucks of gray clinker per week, it shall notify the District (Cher Snyder, 909.396.2430 or csnyder@aqmd.gov) and seek and obtain written approval from the District before doing so. The District shall respond within 48 hours of receipt to any request to import more than 420 trucks of gray clinker in a week.
10. Once each existing outside gray clinker storage pile is reclaimed, the bay in which the gray clinker was stored shall be cleaned while being kept moist. Dust suppressants shall be applied after cleaning to form a crust and vehicular traffic within the bay shall be restricted to prevent any fugitive dust emissions. These restrictions do not restrict TXI/RCC from using

this area for future construction or operations with appropriate permits or from dismantling the equipment to permit alternative use of the site.

11. If TXI/RCC reasonably determines that the Reclaimer is not working in an effective manner for a period of four (4) or more hours, TXI/RCC shall immediately provide notice to the District (Attn: Cher Snyder, 909.396.2430, csnyder@aqmd.gov); cease use of the Reclaimer; and commence maintenance and repair activities to restore the Reclaimer to full service as soon as reasonably possible thereafter.
12. Should the Reclaimer remain out of service pending completion of maintenance and repair activities for a period of more than three business days, the Parties shall meet as soon as reasonably possible thereafter and make a good faith effort to seek an alternative resolution and strategy to be implemented for reclaiming the gray clinker storage piles within 180 days of the effective date of this Agreement. Should the Parties be unable to reach a mutually agreeable alternative resolution and strategy within five business days of the meeting, AQMD may seek other enforcement mechanisms to require an alternative resolution.

Environmental Observer

13. Within 15 days of the effective date of this agreement, TXI/RCC shall contract with or hire, in addition to the existing staff responsible for compliance with air quality rules and regulations, one or more Environmental Observer(s) for purposes of providing continuous (24 hours per day, 7 days per week) on-site monitoring for compliance with conditions of this Settlement Agreement and District permit and rule requirements. This shall be achieved by having (1) a contract employee complete a mutually agreeable checklist while completing the observations on day shift during week days, and (2) a designated TXI/RCC employee complete the same checklist while monitoring activities on swing shift and night shift and on weekend days. The environmental observers shall be assigned and contracted for six months from the effective date of this agreement. Such Environmental Observer(s) shall be fully empowered by TXI/RCC to authorize whatever immediate remedy or resolution that is necessary to mitigate and control fugitive dust from and on the subject site, including the immediate cessation of Reclaiming or other activities as appropriate. More specifically, the Environmental Observer(s) shall:
 - a) Provide continuous monitoring at this site at all times during their assigned shift to ensure compliance with all applicable conditions throughout Phase I and II.
 - b) Observe and document the application of water and dust suppressant to each pile.
 - c) Verify a crust depth of at least 1" at various locations along the pile prior to covering any pile.
 - d) Observe and ensure the proper installation and securing of the cover on each pile.
 - e) Inspect the covering of each pile at least twice daily to ensure that no holes, cracks, gaps, or openings are visible, and that no materials have escaped from beneath the cover.
 - f) At the time of each cover inspection, apply water or dust suppressant at the interface of the cover with the surface of the storage bay to further stabilize any material accumulating at this interface.

- g) In those instances when TXI/RCC is advised or informed of fugitive dust complaints, expedite abatement of the fugitive dust emissions and conduct root cause analysis to resolve and prevent further occurrences of the fugitive dust problem reported.
- h) Conduct periodic inspections of the reclaiming area, including inspections of all baghouse media or baghouses and other related equipment to ensure proper operation and maintenance.
- i) Personally monitor and witness the operation of the Reclaimer, verifying and documenting its operation.
- j) Record, maintain and provide upon request to District staff, daily records/logs documenting ongoing site activities/observations and corrective actions taken where necessary at the Reclaimer and elsewhere at the facility to mitigate fugitive dust. TXI/RCC shall propose an environmental observer checklist and a fugitive dust control log and shall submit them to the District for approval within seven days of the Effective Date. All records/logs shall be kept in a manner approved by the District and be made available to District staff upon request.

Installation/Operation of Wind Station; Wind Monitoring

- 14. TXI/RCC has installed a wind monitoring station that provides real-time on-line remote access to wind data in the control center. TXI/RCC shall make this data available to the District on at least a daily basis and shall work with the District to provide real time access, if feasible. In addition, TXI/RCC shall daily monitor wind speeds and direction and predicted forecast of high wind episodes by calling the District at 1-800-288-7668.
- 15. TXI/RCC shall cease or delay the operation of the Reclaimer and re-cover exposed surface areas of any covered clinker storage piles when:
 - a) Sustained scalar averaged wind speeds exceed 20 mph over 15 minutes, or when gusts (instantaneous wind speeds) exceed 25 mph as measured by the wind monitoring station. If the District determines that these criteria are not adequate to ensure compliance with applicable District and State rules and regulations, the SCAQMD may at any time upon notice to TXI/RCC reduce these criteria to sustained scalar averaged wind speeds in excess of 10 mph over 15 minutes, or when gusts (instantaneous wind speeds) exceed 20 mph as measured by the wind monitoring station.
 - b) Wind-blown fugitive dust from the Reclaimer is visible for a distance of 50 feet from its point of origin or crosses the property line.

Dust Control at Transfer Points

- 16. On and after the effective date of this Agreement, TXI/RCC shall use dust collectors, water spray, or other dust suppression methods at transfer points during conveyance of gray clinker from the storage piles to the finish mill.

Availability and Use of Water Trucks

17. On and after the effective date of this Agreement, TXI/RCC shall ensure the availability on site of one or more water trucks with sufficient capacity to abate fugitive dust through the application as necessary of water to dry materials.

Installation/Maintenance of Wind Shield and Wind Fencing

18. If Phase I is not completed by August 1, 2008, TXI/RCC shall install wind shields 15 feet in height within 14 days of receiving permission to construct at a reasonable distance not to exceed 30 feet behind of the Reclaimer to prevent further transport of any wind-blown clinker material dislodged by the active reclaiming operation. As the active reclaiming operation removes material from the clinker piles, the wind shields shall be relocated to maintain a distance not to exceed 30 feet behind of the Reclaimer until the pile has been completely reclaimed.
19. If Phase I is not completed by August 1, 2008, TXI/RCC shall install wind fencing 15 feet in height within 21 days of receiving permission to construct along the perimeter areas identified in Attachment A to limit fugitive dust from leaving the subject site. Once installed, TXI/RCC shall inspect the wind fencing surrounding the site at least once daily, maintain it in good condition and replace it as necessary to reduce fugitive dust migration.

Baghouse Operations

20. Within 30 days of the completion of Phase I, TXI/RCC shall only discharge dust collected in any of the baghouses operated at this facility into closed containers and shall only transport the dust collected in any of the baghouses using enclosed conveyors.

Recordkeeping and Reporting

21. Copies of all required records shall be maintained on site and made available by TXI/RCC to District inspection staff immediately upon request. Further, copies of weekly and monthly summaries of dust abatement actions shall be mailed, e-mailed, or faxed no later than 3 days after the end of the week or month to Cher Snyder, SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765, fax 909-396-3865.

Community Outreach

22. Within 15 days of the effective date of this agreement and every month thereafter until the reclaiming operation is completed, TXI/RCC shall prepare and mail out to all addresses within ¼ mile of the perimeter of the facility a monthly newsletter notifying them of the project status and key contact(s) for information. TXI/RCC shall also provide a copy of this monthly status report to Cher Snyder at the contact information provided above.
23. Within 14 days of the effective date of this Agreement, TXI/RCC shall post signage in English and Spanish at the following specified locations on the subject property in accordance with the standards specified in Attachment B. These signs shall include the District toll-free complaint line, 1.800.CUT.SMOG (1.800.288.7664), and shall be conspicuously posted within 50 feet of the curb facing:

- ✚ Rubidoux Blvd, behind the main administration building of TXI/RCC.
- ✚ El Rivino Rd, near its intersection with the entry road to the TXI/RCC plant.

Permit Modification

24. Within 14 days of the effective date of this agreement, TXI/RCC shall file all the necessary applications to request revisions to the facility's Title V permit by adding all of the above-described conditions of this agreement to the Title V permit. The application shall include a prohibition on future outside storage of uncovered gray clinker that will remain in the Title V permit. Conditions 1, 10, 17, 20 and 23 also will remain in effect as ongoing Title V permit conditions. Other conditions, including the conditions related directly or indirectly to the removal of the gray clinker storage piles, will expire upon completion of Phase II as identified in the application.

Alternative Resolution

25. Except for Paragraph 15 a, above, if, at any time before Riverside Cement has completed all activities pursuant to the above-referenced conditions for dust control for removing gray clinker from the storage piles ("Gray Clinker Stock Pile Removal and Dust Control Plan"), the District believes that a certain activity undertaken by Riverside Cement pursuant to the Gray Clinker Stock Pile Removal Dust Control Plan is not providing reasonable dust control consistent with the Permits, Rule 403, Rule 1156 and Rule 3002, the following procedures shall be followed:

- a) The District shall immediately notify Riverside Cement of its belief that a certain activity is not an adequate resolution of the alleged NOVs pursuant to this Agreement.
- b) Within twelve hours of receiving notice from the District, Riverside Cement shall immediately cease the specified activity.
- c) Within three business days of cessation of the specified activity, the Parties shall meet and make a good faith effort to seek an alternative resolution and strategy to be implemented for removing the gray clinker stock piles on or before August 1, 2008 pursuant to modifications to this Agreement.
- d) If the Parties are unable to reach an alternative resolution and strategy within ten business days of the meeting, the District may seek all other enforcement mechanisms to require an alternative resolution.

26. **Enforceability.** If the Parties cannot reach an alternative resolution pursuant to Paragraph 25 above, the Parties agree that the Los Angeles Superior Court has jurisdiction over the Parties to enforce the Agreement until performance in full of the terms of the Agreement, as it would have jurisdiction pursuant to California Code of Civil Procedure section 664.6 if litigation were pending.

27. **Settlement Payments.** In addition to implementing the conditions set forth above, Riverside Cement shall pay the following:

- a) Civil Penalty. Riverside Cement shall pay \$400,000 in civil penalties. This cash payment shall be paid on or before September 1, 2008, in the form of a check made payable to the "South Coast Air Quality Management District," shall reference "Riverside Cement Company Settlement Agreement," and shall be mailed to:

William Wong, Esq.
Principal Deputy District Counsel
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

In the event TXI/RCC fails to meet the deadline for completing Phase II set forth in Paragraph 2, above, it agrees to pay an additional civil penalty of \$10,000 per day.

- b) Supplemental Environmental Project. Riverside Cement agrees to expend \$400,000 on Supplemental Environmental Projects designed to address emissions. Such Projects may include the following:
- i. Reducing the number of transfer points.
 - ii. Reducing the length, reconfiguring, and otherwise modifying the conveyors to minimize the potential for fugitive dust, to minimize the distances traveled, and to minimize the proximity of the conveyors to the Facility fence line.
 - iii. Ensuring that all transfer points and conveyors are properly covered or enclosed.
 - iv. Improving collection efficiency of dust collectors and baghouses.
 - v. Returning fines to storage silos or packaging area.

Within 30 days from the effective date of this Agreement, Riverside Cement shall identify and submit for approval a list of proposed projects. Within 60 days of the District's approval of the projects, TXI/RCC shall file all necessary applications associated with those projects. Riverside Cement shall then have 180 days from approval of the permits to complete those projects. Within 30 days of completion, Riverside Cement shall submit a letter report describing and documenting those expenses. If Riverside Cement fails to spend \$400,000 on such projects within the agreed upon time frame or any District-approved extension of that deadline, the balance shall be paid within 15 days thereafter, in the form of a check, and shall be delivered to the District in the manner described above.

- c) Costs. Riverside Cement shall pay \$200,000 to partially reimburse SCAQMD for expenses incurred in connection with its investigation and with respect to the further implementation of this agreement. This cash payment is due September 1, 2008 and shall be delivered to the District in the manner described above.

28. **Compliance With Existing Laws and Regulations.** Nothing in this Agreement shall be construed to limit or excuse Riverside Cement's duty to comply with its Permits and with all applicable laws and regulations, including District Rules 403, 1156, and 3002, with regard to the operation of the Facility.
29. **No Admission of Liability.** The agreements, statements, pleadings, and actions stated in or taken pursuant to this Agreement are made for the purpose of compromising and settling these matters amicably, in the spirit of conciliation, and to avoid litigation. Nothing contained in this Agreement shall constitute or be construed, considered, offered, or admitted, in whole or in part, as evidence of, or an admission of evidence of, fault, wrongdoing, liability, or violative conduct by any Party or its respective present or former officers, directors, agents, representatives, employees, servants, affiliates, contractors, attorneys, shareholders, partners, dealers, successors-in-interest, predecessors-in-interest, subsidiaries, parents, and assigns, in any administrative or judicial proceeding or litigation in any court, agency, or forum whatsoever. It is acknowledged that each Party's covenants, agreements, and releases set forth herein is in consideration of this Agreement and is given for the purpose of avoiding the costs and expenses of any further legal proceedings.
30. **Release.** As of the Effective Date of this Agreement, the District hereby fully releases and forever discharges Riverside Cement and its officers, directors, agents, representatives, employees, servants, affiliates, contractors, attorneys, shareholders, partners, dealers, successors-in-interest, predecessors-in-interest, subsidiaries, parents, and assigns from any and all rights, claims, and actions related to or arising out of the following:
- a) The alleged violations described in Paragraph E above.
31. **Binding.** This Agreement shall be deemed to obligate, extend to, and inure to the benefit of the Parties to the Agreement, and the legal successors, assigns, transferees, grantees, and heirs of each such Party, including those who may assume any or all of the capacities described herein.
32. **Entire Agreement.** This Agreement constitutes an integrated contract expressing the entire agreement of the Parties hereto relative to the subject matter discussed herein. This Agreement supersedes all prior proposals, agreements, and understandings between the Parties and may not be changed or terminated orally, and no change, termination, or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the Party against whom the same is sought to be enforced.
33. **No Party Deemed Drafter.** The Parties acknowledge that the terms of the Agreement are contractual and are the result of negotiations between the Parties and their respective counsel. Each Party and their respective counsel cooperated in the drafting and preparation of the Agreement.
34. **Authority to Execute.** Each Party represents and warrants to the other Party that the signatories to the Agreement have been duly authorized to execute the Agreement on behalf of the entities identified below.

35. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. The Parties may execute and deliver this Agreement by transmitting an authorized signature by fax or pdf, and copies of this Agreement signed and delivered by means of faxed signatures or signatures in a pdf document shall have the same effect as copies executed and delivered with original signatures.
36. **Notices.** All notices, requests, and other communications which may be given under or concerning this Agreement shall be made in writing and shall be deemed to have been given when received. In each case notice shall be sent to:

For RIVERSIDE CEMENT COMPANY:

Robert A. Wyman, Jr., Esq.
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, California 90071-1560
Telephone No.: (213) 891-8346
Facsimile No.: (213) 891-8763

For the SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT:

William Wong, Esq.
Principal Deputy District Counsel
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765-0940
Telephone No.: (909) 396-2307
Facsimile No.: (909) 396-2961

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37. **Effective Date.** Agreeing to and accepting all of the provisions herein, the undersigned have executed this Agreement on the date set forth below. The effective date of this Agreement is the date upon which the last Party executes it.

IN WITNESS THEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the date set forth below their respective signatures.

**SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT**

By: Barry R. Wallerstein

Barry R. Wallerstein, D.Env.
Executive Officer

Dated: June 24, 2008

RIVERSIDE CEMENT COMPANY

By: _____

Philip L. Gaynor
Assistant General Manager – Production

Dated: June __, 2008

IN WITNESS THEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the date set forth below their respective signatures.

**SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT**

RIVERSIDE CEMENT COMPANY

By: _____

By: Philip L. Gaynor

Barry R. Wallerstein, D.Env.
Executive Officer

Philip L. Gaynor
Assistant General Manager – Production

Dated: June ____, 2008

Dated: June 24, 2008

Attachment A

Attachment #3

Map showing location of wind fencing to be installed at TXI Riverside Cement



Wind fencing along northern and eastern perimeter of facility's active footprint



Attachment B
Signage Requirements

	Lettering/Line Height
	2"
TXI Riverside Cement Crestmore	6"
IF YOU SEE DUST COMING FROM THIS SITE	4"
CALL	4"
Contact Name at 1.800.XXX.XXXX	6"
or	4"
AQMD	6"
(SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT)	4"
1.800.CUT.SMOG	6"
(1.800.288.7664)	6"
	2"

- Signs shall be made of 1' A/C laminated plywood board.
- Sign dimensions shall be a minimum of 48" tall x "96" wide.
- Text for each line shall be at the minimum height specified above.
- Sign background shall be white.
- Text shall be printed in a bold, black font that can be easily read from a distance (e.g., Verdana, Arial).
- Lower edge of sign board shall be a minimum of 6 feet and a maximum of 7 feet above grade.
- Contact Name shall be "Environmental Observer" or the name of an individual selected by TXI/RCC and approved by AQMD.
- Contact telephone number shall be a toll-free number accessible 24 hours/day, 7 days/week.