

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2007-0145-AIR-E **TCEQ ID:** RN102074739 **CASE NO.:** 32499
RESPONDENT NAME: Houston Marine Services, Inc.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMEDIATE AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Houston Marine Services Baytown Terminal, 850 South Lynchburg Road, Baytown, Harris County</p> <p>TYPE OF OPERATION: Fuel terminal</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 30, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Miriam Hall, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-1044; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. James Varley, VP, Houston Marine Services, Inc., 363 North Sam Houston Parkway East, Suite 890, Houston, Texas 77060 Mr. Jim Bailey, President, Houston Marine Services, Inc., 363 North Sam Houston Parkway East, Suite 890, Houston, Texas 77060 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 7, 2006</p> <p>Date of NOE Relating to this Case: January 18, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>1) Failure to conduct and submit a stack test for Boiler No. 1 by March 31, 2005 [30 TEX. ADMIN. CODE §§ 117.479(e) and 117.534(2)(B)(i), and TEX. HEALTH & SAFETY CODE § 382.085(b)]</p> <p>2) Failure to comply with Boiler No. 2's maximum firing rate of 9.0 billion British Thermal Units ("Btu") per calendar year. Specifically for calendar year 2005, the firing rate was 12.008 billion Btu [30 TEX. ADMIN. CODE § 116.115(c), Permit No. 21098, Special Condition ("SC") 7, and TEX. HEALTH & SAFETY CODE § 382.085(b)]</p> <p>3) Failure to maintain fuel usage records for Boilers No. 1 and No. 2. Specifically, fuel usage records for both boilers were unavailable for March 2005 through July 26, 2005 and on weekends for July 27, 2005 through December 31, 2005. In addition, for Boiler No. 1, hours of fuel oil firing were unavailable for December 31, 2004 through January 2, 2005 and February 15, 2005 through July 26, 2005. For Boiler No. 2, records of type of fuel fired, fuel consumption and hours of operation were unavailable for December 21, 2004 through July 26, 2005, and days were missing in records from November 7, 2004 through December 20, 2004 and July 27, 2005 through December 31, 2005 [30 TEX. ADMIN. CODE §§ 106.183(5),</p>	<p>Total Assessed: \$17,812</p> <p>Total Deferred: \$3,562 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$14,250</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a) On November 21, 2006, submitted a Stage II Vapor Recovery Exemption Confirmation Form with gasoline throughput for 2004 and 2005;</p> <p>b) On January 18, 2007 and February 1, 2007, conducted and submitted a stack test for Boiler No. 1, respectively; and</p> <p>c) By February 1, 2007, submitted reconstructed records of fuel use for Boilers No. 1 and No. 2 and implemented revised procedures to confirm that detailed fuel usage and firing records are kept.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a) Within 45 days after the effective date of this Agreed Order:</p> <p>i. Submit an administratively complete application to amend Permit No. 21098 to replace or modify Boiler No. 2 and adjust emission rates and other affected permit conditions to reflect operating parameters of the new or modified boiler, or remove boiler from service; and</p> <p>ii. Submit an administratively complete Permit By Rule ("PBR") or permit amendment application to increase throughput rates and corresponding emission rates for Tanks 25-1, 25-2, 5-1, H-1, H-2, H-3, 15-1, 8-1, 8-2, B-3, and B-4.</p> <p>b) Submit permit amendment/PBR applications;</p> <p>c) Respond complete and adequately, as determined by the Air Permits Division, to all letters requesting information concerning the Permit No. 21098</p>

<p>116.115(b)(2)(E), 116.115(c), 117.479(g), Permit No. 21098, SC 11, and TEX. HEALTH & SAFETY CODE § 382.085(b)]</p> <p>4) Failure to control emissions from Tank 25-2 for volatile organic compounds ("VOC") and from Boiler No. 2 for sulfur dioxide ("SO₂") and carbon monoxide ("CO"). Specifically, the VOC emission limit on Tank 25-2 is 1.19 tons per year ("tpy"), and 2004 emissions were 2.4624 tpy. Boiler No. 2's emission limits are 1.44 tpy for SO₂ and 0.17 tpy for CO. Actual SO₂ emissions were 3.1875 tpy in 2004 and 1.7582 in 2005. Actual CO emissions were 0.375 tpy in 2004 and 0.2069 tpy in 2005 [30 TEX. ADMIN. CODE § 116.115(c), Permit No. 21098, SC 1, and TEX. HEALTH & SAFETY CODE § 382.085(b)]</p> <p>5) Failure to conduct and submit a stack test for Boiler No. 2 by March 31, 2005 [30 TEX. ADMIN. CODE §§ 117.479(e) and 117.534(2)(B)(i), and TEX. HEALTH & SAFETY CODE § 382.085(b)]</p> <p>6) Failure to accurately represent, in Permit No. 21098, annual throughput rates for Tank 25-1 for 2004 and 2005, Tank 25-2 for 2004, Tank 5-1 for 2004, Tank H-1 for 2004 and 2005, Tank H-2 for 2004, Tank H-3 for 2004, Tank 15-1 for 2004 and 2005, Tank 8-1 for 2004, Tank 8-2 for 2004 and 2005, and Tanks B-3 and B-4 for 2004 [30 TEX. ADMIN. CODE § 116.116(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)]</p> <p>7) Failure to submit the annual report of monthly gasoline throughput for 2004 and 2005 [30 TEX. ADMIN. CODE § 115.247(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]</p>		<p>amendment or PBR application within 30 days of the date of such letters, or by any other deadline specified in writing;</p> <p>d) Within 345 days after the effective date of this Agreed Order, submit written certification that:</p> <ul style="list-style-type: none">i. Boiler No. 2 has been replaced or modified, a permit amendment has been obtained for the boiler, and stack tested, or that operation has ceased until such time that Boiler No. 2 is in compliance with the permit and TCEQ rules; andii. Tanks 25-1, 25-2, 5-1, H-1, H-2, H-3, 15-1, 8-1, 8-2, B3, and B4 are in compliance with permit or PBR throughput and emission limits. <p>e) The written certification required by Ordering Provision No. 2.d., shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the ordering provision. The certification shall be notarized by a State of Texas Notary Public.</p>
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Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	22-Jan-2007	Screening	31-Jan-2007	EPA Due	
	PCW	8-May-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	Houston Marine Services, Inc.		
Reg. Ent. Ref. No.	RN102074739		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32499	No. of Violations	7	
Docket No.	2007-0145-AIR-E	Order Type	1660	
Media Program(s)	Air Quality	Enf. Coordinator	Miriam Hall	
Multi-Media		EC's Team	Enforcement Team 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

Total EB Amounts **Subtotal 6**
Approx. Cost of Compliance ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 31-Jan-2007

Docket No. 2007-0145-AIR-E

PCW

Respondent Houston Marine Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32499

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102074739

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	11	22%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
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) 22%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty was enhanced for 11 NOVs for unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 31-Jan-2007

Docket No. 2007-0145-AIR-E

PCW

Respondent Houston Marine Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32499

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102074739

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 117.479(e), 117.534(2)(B)(i), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to conduct and submit a stack test for Boiler No. 1 by March 31, 2005.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could have been exposed to insignificant amounts of pollutants which would not have exceeded levels that are protective of human health or the environment.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

671 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$552

Violation Final Penalty Total \$610

This violation Final Assessed Penalty (adjusted for limits) \$610

Economic Benefit Worksheet

Respondent Houston Marine Services, Inc.
Case ID No. 32499
Reg. Ent. Reference No. RN102074739
Media Air Quality
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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$6,000	31-Mar-2005	1-Feb-2007	1.8	\$552	n/a	\$552
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of conducting the stack test and submitting the report from required compliance date under the rule to date report submitted.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,000

TOTAL

\$552

Screening Date 31-Jan-2007

Docket No. 2007-0145-AIR-E

PCW

Respondent Houston Marine Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32499

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102074739

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Permit No. 21098, Special Condition ("SC") 7, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with Boiler No. 2's maximum firing rate of 9.0 billion British Thermal Units ("Btu") per calendar year. Specifically for calendar year 2005, the firing rate was 12.008 billion Btu.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could have been exposed to insignificant amounts of pollutants which would not have exceeded levels that are protective of human health or the environment.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

365 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event for 2005 is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,702

Violation Final Penalty Total \$610

This violation Final Assessed Penalty (adjusted for limits) \$610

Economic Benefit Worksheet

Respondent Houston Marine Services, Inc.
Case ID No. 32499
Reg. Ent. Reference No. RN102074739
Media Air Quality
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	\$20,000	1-Jan-2005	11-May-2008	3.4	\$224	\$4,479	\$4,702
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 The estimated cost of replacing or modifying the boiler. The date required is the first day a violation was documented and final date is the projected compliance date. (The cost of the permit amendment is included in the calculation for the economic benefit for Violation No. 4.)

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs
 (This section is currently blank.)

Approx. Cost of Compliance	\$20,000	TOTAL	\$4,702
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Screening Date 31-Jan-2007

Docket No. 2007-0145-AIR-E

PCW

Respondent Houston Marine Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32499

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102074739

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 106.183(5), 116.115(b)(2)(E), 116.115(c), 117.479(g), Permit No. 21098, SC 11, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain fuel usage records for Boilers No. 1 and No. 2. Specifically, fuel usage records for both boilers were unavailable for March 2005 through July 26, 2005 and on weekends for July 27, 2005 through December 31, 2005. In addition, for Boiler No. 1, hours of fuel oil firing were unavailable for December 31, 2004 through January 2, 2005 and February 15, 2005 through July 26, 2005. For Boiler No. 2, records of type of fuel fired, fuel consumption and hours of operation were unavailable for December 21, 2004 through July 26, 2005, and days were missing in records from November 7, 2004 through December 20, 2004 and July 27, 2005 through December 31, 2005.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

More than 70% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$122

This violation Final Assessed Penalty (adjusted for limits) \$122

Economic Benefit Worksheet

Respondent Houston Marine Services, Inc.
Case ID No. 32499
Reg. Ent. Reference No. RN102074739
Media Air Quality
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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$750	7-Nov-2006	1-Feb-2007	0.2	\$9	n/a	\$9
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 The estimated cost of reconstructing missing records of fuel use by calculating an estimated fuel used in Boilers No. 1 and No. 2 from fuel meter readings and implementing revised procedures to confirm that detailed fuel usage and firing rate records are kept. The begin date is the date of the investigation and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$750	TOTAL	\$9
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Screening Date 31-Jan-2007

Docket No. 2007-0145-AIR-E

PCW

Respondent Houston Marine Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32499

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102074739

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Permit No. 21098, SC 1, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to control emissions from Tank 25-2 for volatile organic compounds ("VOC") and from Boiler No. 2 for sulfur dioxide ("SO2") and carbon monoxide ("CO"). Specifically, the VOC emission limit on Tank 25-2 is 1.19 tons per year ("tpy"), and 2004 emissions were 2.4624 tpy. Boiler No. 2's emission limits are 1.44 tpy for SO2 and 0.17 tpy for CO. Actual SO2 emissions were 3.1875 tpy in 2004 and 1.7582 in 2005. Actual CO emissions were 0.375 tpy in 2004 and 0.2069 tpy in 2005.

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 insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

730 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	X
single event		

Violation Base Penalty \$3,000

Three annual events are recommended (one for Tank 25-2 and two for Boiler No. 2).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,008

Violation Final Penalty Total \$3,660

This violation Final Assessed Penalty (adjusted for limits) \$3,660

Economic Benefit Worksheet

Respondent Houston Marine Services, Inc.
Case ID No. 32499
Reg. Ent. Reference No. RN102074739
Media Air Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$5,000	1-Jan-2004	11-Jan-2008	4.0	\$1,008	n/a	\$1,008
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of obtaining a permit amendment from when the violation was first documented to projected compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$1,008

Screening Date 31-Jan-2007

Docket No. 2007-0145-AIR-E

PCW

Respondent Houston Marine Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32499

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102074739

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code §§ 117.479(e), 117.534(2)(B)(i), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to conduct and submit a stack test for Boiler No. 2 by March 31, 2005.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes

Human health or the environment could have been exposed to significant amounts of pollutants which would not have exceeded levels that are protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 671 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7,210

Violation Final Penalty Total \$1,220

This violation Final Assessed Penalty (adjusted for limits) \$1,220

Economic Benefit Worksheet

Respondent Houston Marine Services, Inc.
Case ID No. 32499
Reg. Ent. Reference No. RN102074739
Media Air Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$6,000	31-Mar-2005	11-May-2008	4.0	\$1,210	\$6,000	\$7,210

Notes for AVOIDED costs

The estimated cost of conducting a stack test from the date required by the rule to the estimated replacement date. The Respondent plans to replace the boiler (See Violation No. 2) and is going to have to stack test the new or modified boiler.

Approx. Cost of Compliance

\$6,000

TOTAL

\$7,210

Screening Date 31-Jan-2007

Docket No. 2007-0145-AIR-E

PCW

Respondent Houston Marine Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32499

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102074739

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 116.116(a)(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to accurately represent, in Permit No. 21098, annual throughput rates for Tank 25 1 for 2004 and 2005, Tank 25-2 for 2004, Tank 5-1 for 2004, Tank H-1 for 2004 and 2005, Tank H-2 for 2004, Tank H-3 for 2004, Tank 15-1 for 2004 and 2005, Tank 8-1 for 2004, Tank 8-2 for 2004 and 2005, and Tanks B-3 and B-4 for 2004.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could have been exposed to insignificant amounts of pollutants which would not have exceeded levels that are protective of human health or the environment.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 15

730 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$7,500

Fifteen single events are recommended (one event per tank per year).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$101

Violation Final Penalty Total \$9,150

This violation Final Assessed Penalty (adjusted for limits) \$9,150

Economic Benefit Worksheet

Respondent Houston Marine Services, Inc.
Case ID No. 32499
Reg. Ent. Reference No. RN102074739
Media Air Quality
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$500	1-Jan-2004	11-Jan-2008	4.0	\$101	n/a	\$101
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of obtaining a Permit By Rule to increase throughput from date violation first documented to projected compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$101

Screening Date 31-Jan-2007

Docket No. 2007-0145-AIR-E

PCW

Respondent Houston Marine Services, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32499

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102074739

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 115.247(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit the annual report of monthly gasoline throughput for 2004 and 2005.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	X			10%

Matrix Notes

Failed to comply with 100% of the rule requirement.

Adjustment \$9,000

\$1,000

Violation Events

2 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$2,000

Two single events are recommended, one for each missed report.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$45

Violation Final Penalty Total \$2,440

This violation Final Assessed Penalty (adjusted for limits) \$2,440

Economic Benefit Worksheet

Respondent Houston Marine Services, Inc.
Case ID No. 32499
Reg. Ent. Reference No. RN102074739
Media Air Quality
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	31-Jan-2005	21-Nov-2006	1.8	\$45	n/a	\$45

Notes for DELAYED costs

The estimated cost of submitting the Stage II Vapor Recovery Exemption Confirmation Form with throughput for 2004 and 2005 from due date of first report to actual compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$45

Compliance History

Customer/Respondent/Owner-Operator:	CN600358949 Houston Marine Services, Inc.	Classification: AVERAGE	Rating: 0.86
Regulated Entity:	RN102074739 HOUSTON MARINE SERVICES BAYTOWN TERMINAL	Classification: AVERAGE	Site Rating: 0.44
ID Number(s):	WASTEWATER PERMIT WQ0002842000 WASTEWATER PERMIT TPDES0106488 WASTEWATER PERMIT TX0106488 INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXR000024570 GENERATION INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # 38185 GENERATION (SWR) AIR NEW SOURCE PERMITS PERMIT 21098 AIR NEW SOURCE PERMITS PERMIT 34280 AIR NEW SOURCE PERMITS ACCOUNT NUMBER HG1779E AIR NEW SOURCE PERMITS AFS NUM 4820101393 AIR NEW SOURCE PERMITS PERMIT 56146 AIR NEW SOURCE PERMITS REGISTRATION 70441 AIR NEW SOURCE PERMITS PERMIT 70190 AIR NEW SOURCE PERMITS REGISTRATION 80763 PETROLEUM STORAGE TANK REGISTRATION 55174 REGISTRATION USED OIL REGISTRATION A85458 USED OIL EPA ID TXR000024570 PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1013287 STORMWATER PERMIT TXR05Q746		
Location:	850 S Lynchburg Rd, Baytown, TX	Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	March 09, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 01, 2002 to March 01, 2007		

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

Name: Miriam Hall Phone: (512) 239-1044

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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 03/25/2002 (224871)
 - 2 04/22/2002 (224873)
 - 3 05/22/2002 (224877)
 - 4 06/24/2002 (224880)
 - 5 07/24/2002 (224883)
 - 6 08/22/2002 (224885)
 - 7 09/26/2002 (224888)
 - 8 10/21/2002 (224891)

9	11/22/2002	(224893)
10	12/27/2002	(224896)
11	01/24/2003	(224899)
12	02/24/2003	(224869)
13	03/21/2003	(323371)
14	04/22/2003	(224874)
15	05/21/2003	(323374)
16	06/04/2003	(60873)
17	06/23/2003	(323375)
18	07/02/2003	(62021)
19	07/16/2003	(323376)
20	08/18/2003	(323377)
21	09/03/2003	(152338)
22	09/19/2003	(323378)
23	10/20/2003	(323379)
24	11/14/2003	(323380)
25	12/12/2003	(323381)
26	01/12/2004	(323382)
27	01/28/2004	(256287)
28	02/11/2004	(323370)
29	03/10/2004	(323372)
30	03/19/2004	(323383)
31	04/19/2004	(323373)
32	05/14/2004	(364600)
33	06/04/2004	(266787)
34	06/14/2004	(364601)
35	07/16/2004	(364602)
36	08/09/2004	(364603)
37	09/17/2004	(364604)
38	10/15/2004	(364605)
39	11/08/2004	(388847)
40	12/15/2004	(388848)
41	02/14/2005	(388846)
42	03/16/2005	(446738)
43	04/20/2005	(426450)
44	05/18/2005	(426451)
45	06/27/2005	(426452)
46	07/14/2005	(446739)
47	07/20/2005	(371971)
48	07/20/2005	(400519)
49	07/28/2005	(402292)
50	07/29/2005	(402194)
51	08/05/2005	(403672)
52	08/15/2005	(401318)
53	08/15/2005	(446740)
54	08/15/2005	(405055)
55	08/17/2005	(405668)
56	08/17/2005	(405708)
57	08/19/2005	(406187)
58	08/22/2005	(406514)
59	08/29/2005	(418374)
60	09/08/2005	(418507)
61	09/19/2005	(446741)
62	09/19/2005	(446742)
63	10/17/2005	(479651)
64	11/10/2005	(433637)
65	11/14/2005	(479652)
66	12/19/2005	(479653)
67	02/22/2006	(479649)
68	03/20/2006	(479650)
69	04/19/2006	(505312)
70	06/02/2006	(505313)
71	06/29/2006	(505314)
72	06/29/2006	(505315)
73	07/24/2006	(527588)
74	07/24/2006	(527591)
75	08/22/2006	(527589)
76	09/19/2006	(527590)

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

Date: 07/31/2002 (224885)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date: 09/30/2002 (224891)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date: 10/31/2002 (224893)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date: 12/31/2002 (224899)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date: 06/04/2003 (60873)
 Self Report? NO Classification: Moderate
 Rqmt Prov: OP Permit No. 02842-000, Page 6 No. 7c
 Description: Failure to comply with required noncompliance notification procedures.
 Self Report? NO Classification: Moderate
 Rqmt Prov: OP Permit No. 02842-000, P. 2 #1, P. 2a #1
 Description: Failure to maintain compliance with the permitted effluent limits for COD and Oil and Grease (O&G). During the 12 month period of review (April, 2002 - March, 2003.), the self-reported data indicated 5 violations of the COD and O&G permitted limitations.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 319, SubChapter A 319.1
 Description: Failure to record all required information on the Discharge Monitoring Reports (DMRs).
 Date: 07/01/2003 (62021)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(5)
 Description: Failure to provide a housed and locked enclosure for hypochlorinator solution containers and pumps.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)[G]
 Description: Failure to provide the ground storage tank with a ladder to facilitate routine inspection.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)
 Description: Failure to equip the ground storage tank with a water level indicator.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)
 Description: Failure to provide the ground storage tank with a properly designed overflow pipe.
 Date: 01/28/2004 (256287)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)
 Description: During the investigation and records review, it was noted that NOR had few inaccuracies that require updating.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 324, SubChapter A 324.1
 30 TAC Chapter 324, SubChapter A 324.12
 40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.54(c)
 Description: The container storage area, WMU 001, located near the maintenance storage building in the northwest side of the facility was not equipped with a secondary containment system.
 Date: 02/29/2004 (323372)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2005 (426451)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2006 (479649)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2006 (527589)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

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
HOUSTON MARINE SERVICES, INC.
RN102074739

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

AGREED ORDER
DOCKET NO. 2007-0145-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 Houston Marine Services, Inc. ("HMS") 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 HMS appear before the Commission and together stipulate that:

1. HMS owns and operates a fuel terminal at 850 South Lynchburg Road in Baytown, Harris 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 HMS agree that the Commission has jurisdiction to enter this Agreed Order, and that HMS is subject to the Commission's jurisdiction.
4. HMS received notice of the violations alleged in Section II ("Allegations") on or about January 23, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by HMS of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seventeen Thousand Eight Hundred Twelve Dollars (\$17,812) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). HMS has paid Fourteen Thousand Two Hundred Fifty Dollars (\$14,250) of the administrative penalty and Three Thousand Five Hundred Sixty-Two Dollars (\$3,562) is deferred

contingent upon HMS'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 HMS fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require HMS to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and HMS 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 HMS has implemented the following corrective measures at the Plant:
 - a. On November 21, 2006, submitted a Stage II Vapor Recovery Exemption Confirmation Form with gasoline throughput for 2004 and 2005;
 - b. On January 18, 2007 and February 1, 2007, conducted and submitted a stack test for Boiler No. 1, respectively; and
 - c. By February 1, 2007, submitted reconstructed records of fuel use for Boilers No. 1 and No. 2 and implemented revised procedures to confirm that detailed fuel usage and firing records are kept.
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 HMS 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 owner and operator of the Plant, HMS is alleged to have:

1. Failed to conduct and submit a stack test for Boiler No. 1 by March 31, 2005, in violation of 30 TEX. ADMIN. CODE §§ 117.479(e), 117.534(2)(B)(i) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006.
2. Failed to comply with Boiler No. 2's maximum firing rate of 9.0 billion British Thermal Units ("Btu") per calendar year, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Permit No. 21098, Special Condition ("SC") 7, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented

during an investigation conducted on November 7, 2006. Specifically for calendar year 2005, the firing rate was 12.008 billion Btu.

3. Failed to maintain fuel usage records for Boilers No. 1 and No. 2, in violation of 30 TEX. ADMIN. CODE §§ 106.183(5), 116.115(b)(2)(E), 116.115(c), 117.479(g), Permit No. 21098, SC 11, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006. Specifically, fuel usage records for both boilers were unavailable for March 2005 through July 26, 2005 and on weekends for July 27, 2005 through December 31, 2005. In addition, for Boiler No. 1, hours of fuel oil firing were unavailable for December 31, 2004 through January 2, 2005 and February 15, 2005 through July 26, 2005. For Boiler No. 2, records of type of fuel fired, fuel consumption and hours of operation were unavailable for December 21, 2004 through July 26, 2005, and days were missing in records from November 7, 2004 through December 20, 2004 and July 27, 2005 through December 31, 2005.
4. Failed to control emissions from Tank 25-2 for volatile organic compounds ("VOC") and from Boiler No. 2 for sulfur dioxide ("SO₂") and carbon monoxide ("CO"), in violation of 30 TEX. ADMIN. CODE § 116.115(c), Permit No. 21098, SC 1, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006. Specifically, the VOC emission limit on Tank 25-2 is 1.19 tons per year ("tpy"), and 2004 emissions were 2.4624 tpy. Boiler No. 2's emission limits are 1.44 tpy for SO₂ and 0.17 tpy for CO. Actual SO₂ emissions were 3.1875 tpy in 2004 and 1.7582 in 2005. Actual CO emissions were 0.375 tpy in 2004 and 0.2069 tpy in 2005.
5. Failed to conduct and submit a stack test for Boiler No. 2 by March 31, 2005, in violation of 30 TEX. ADMIN. CODE §§ 117.479(e), 117.534(2)(B)(i), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006.
6. Failed to accurately represent, in Permit No. 21098, annual throughput rates for Tank 25-1 for 2004 and 2005, Tank 25-2 for 2004, Tank 5-1 for 2004, Tank H-1 for 2004 and 2005, Tank H-2 for 2004, Tank H-3 for 2004, Tank 15-1 for 2004 and 2005, Tank 8-1 for 2004, Tank 8-2 for 2004 and 2005, and Tanks B-3 and B-4 for 2004, in violation of 30 TEX. ADMIN. CODE § 116.116(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006.
7. Failed to submit the annual report of monthly gasoline throughput for 2004 and 2005, in violation of 30 TEX. ADMIN. CODE § 115.247(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006.

III. DENIALS

HMS generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

during an investigation conducted on November 7, 2006. Specifically for calendar year 2005, the firing rate was 12.008 billion Btu.

3. Failed to maintain fuel usage records for Boilers No. 1 and No. 2, in violation of 30 TEX. ADMIN. CODE §§ 106.183(5), 116.115(b)(2)(E), 116.115(c), 117.479(g), Permit No. 21098, SC 11, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006. Specifically, fuel usage records for both boilers were unavailable for March 2005 through July 26, 2005 and on weekends for July 27, 2005 through December 31, 2005. In addition, for Boiler No. 1, hours of fuel oil firing were unavailable for December 31, 2004 through January 2, 2005 and February 15, 2005 through July 26, 2005. For Boiler No. 2, records of type of fuel fired, fuel consumption and hours of operation were unavailable for December 21, 2004 through July 26, 2005, and days were missing in records from November 7, 2004 through December 20, 2004 and July 27, 2005 through December 31, 2005.
4. Failed to control emissions from Tank 25-2 for volatile organic compounds ("VOC") and from Boiler No. 2 for sulfur dioxide ("SO₂") and carbon monoxide ("CO"), in violation of 30 TEX. ADMIN. CODE § 116.115(c), Permit No. 21098, SC 1, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006. Specifically, the VOC emission limit on Tank 25-2 is 1.19 tons per year ("tpy"), and 2004 emissions were 2.4624 tpy. Boiler No. 2's emission limits are 1.44 tpy for SO₂ and 0.17 tpy for CO. Actual SO₂ emissions were 3.1875 tpy in 2004 and 1.7582 in 2005. Actual CO emissions were 0.375 tpy in 2004 and 0.2069 tpy in 2005.
5. Failed to conduct and submit a stack test for Boiler No. 2 by March 31, 2005, in violation of 30 TEX. ADMIN. CODE §§ 117.479(e), 117.534(2)(B)(i), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006.
6. Failed to accurately represent, in Permit No. 21098, annual throughput rates for Tank 25-1 for 2004 and 2005, Tank 25-2 for 2004, Tank 5-1 for 2004, Tank H-1 for 2004 and 2005, Tank H-2 for 2004, Tank H-3 for 2004, Tank 15-1 for 2004 and 2005, Tank 8-1 for 2004, Tank 8-2 for 2004 and 2005, and Tanks B-3 and B-4 for 2004, in violation of 30 TEX. ADMIN. CODE § 116.116(a)(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006.
7. Failed to submit the annual report of monthly gasoline throughput for 2004 and 2005, in violation of 30 TEX. ADMIN. CODE § 115.247(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 7, 2006.

III. DENIALS

HMS generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that HMS pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and HMS'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: Houston Marine Services, Inc., Docket No. 2007-0145-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that HMS shall undertake the following technical requirements:

- a. Within 45 days after the effective date of this Agreed Order:

- i. Submit an administratively complete application to amend Permit No. 21098 to replace or modify Boiler No. 2 and adjust emission rates and other affected permit conditions to reflect operating parameters of the new or modified boiler, or remove boiler from service;
- ii. Submit an administratively complete Permit By Rule ("PBR") or permit amendment application to increase throughput rates and corresponding emission rates for Tanks 25-1, 25-2, 5-1, H-1, H-2, H-3, 15-1, 8-1, 8-2, B3, and B-4;

- b. Submit permit amendment/PBR applications to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Respond completely and adequately, as determined by the Air Permits Division, to all letters requesting information concerning the Permit No. 21098 amendment or PBR application within 30 days of the date of such letters, or by any other deadline specified in writing;

- d. Within 345 days after the effective date of this Agreed Order, submit written certification that:

- i. Boiler No. 2 has been replaced or modified, a permit amendment has been obtained for the boiler, and stack tested, in accordance with 30 TEX. ADMIN. CODE § 117.479(e), or that operation has ceased until such time that Boiler No. 2 is in compliance with the permit and TCEQ rules; and
- ii. Tanks 25-1, 25-2, 5-1, H-1, H-2, H-3, 15-1, 8-1, 8-2, B3, and B-4 are in compliance with permit or PBR throughput and emission limits.

- e. The written certification required by Ordering Provision No. 2.d. shall be as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the ordering provision. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

3. The provisions of this Agreed Order shall apply to and be binding upon HMS. HMS is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If HMS 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, HMS's failure to comply is not a violation of this Agreed Order. HMS shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. HMS shall notify the Executive Director within seven days after HMS becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by HMS shall be made in writing to the Executive Director. Extensions are not effective until HMS receives written

approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against HMS in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to HMS, or three days after the date on which the Commission mails notice of the Order to HMS, 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

John S. Reddie
For the Executive Director

8/27/07
Date

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, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Jim Bailey
Signature

05-16-2007
Date

JIM BAILEY
Name (Printed or typed)
Authorized Representative of
Houston Marine Services, Inc.

President
Title

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.

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