EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0503-AIR-E **TCEQ ID:** RN101954394 **CASE NO.:** 33100

RESPONDENT NAME: Explorer Pipeline Company

ORDER TYPE:		
_X_1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
_X_AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Port Arthur Tank Farm, 6300 West Port Arthur Road, Port Arthur, Jefferson County

TYPE OF OPERATION: Petroleum storage and distribution

SMALL BUSINESS: ___ Yes _X_ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on July 23, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Daniel Siringi, Enforcement Division, Enforcement Team 5, R-10, (409) 899-8799; Mr. David VanSoest, Enforcement Division, MC 219, (512) 239-0468

Respondent: Mr. Jim Sieck, Environmental Manager, Explorer Pipeline Company, 6846 South Canton Avenue, Suite 300, Tulsa, Oklahoma 74136

Mr. Timothy C. Felt, President and CEO, Explorer Pipeline Company, 6846 South Canton Avenue, Suite 300, Tulsa, Oklahoma 74136

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** December 5, 2006 **Date of NOE Relating to this Case:** January 30, 2007 (NOE) **Background Facts:** This was a routine investigation. Two violations were documented. **AIR** 1) Failure to determine if the emissions event was reportable, timely report an emissions event occurring on September 30, 2006 within 24 hours of discovery, and submit a final report no later than two weeks after the end of an emissions event, as documented in a record review conducted on December 5, 2006. Specifically, the initial report was to be submitted on or before October 1, 2006. The initial report was received on October 24, 2006. The final report was to be submitted on or before October 15, 2006. The final report was submitted on November 20, 2006 [30 TEX. ADMIN. CODE §§ 101.201(a)(1)(A), 101.201(a)(1)(B), 101.201(c), and 122.143(4), Federal Operating Permit O-2780, General Terms and Conditions, Special Condition 2(F), and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failure to maintain an emission rate below the allowable emission limits and to properly operate a floating roof storage tank. Specifically, on September 30, 2006, over a period of 43 hours, Tank 131, Emission Point Number (EPN: T-131) emitted unauthorized emissions of approximately 1,881 pounds ("lbs") of volatile organic compounds ("VOC"). The permit limit is 3.75 pounds per hour ("lbs/hr") for VOC. The emissions event	**Total Assessed:** $3,240 **Total Deferred:** $648 __Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $2,592 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, implement improvements to design, operation, or maintenance procedures, in order to address the late reporting that occurred on September 30, 2006 and to prevent the recurrence of same or similar incidents; b. Within 30 days after the effective date of this Agreed Order, implement improvements to design, operation, or maintenance procedures, in order to address the emissions event that occurred on September 30, 2006 and to prevent the recurrence of same or similar incidents; and c. Within 45 days after the effective date of this Agreed Order, submit written certification including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a. and b.

was caused by the floating roof of Tank 131 resting on the leg supports after partial emptying, while 996 barrels of gasoline remained inside. Since these emissions could have been foreseen and avoided by good design, operation and maintenance practices, the emissions do not meet the affirmative defense criteria specified in 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 116.115(c), and 101.20(1), and 122.143(4), New Source Review Permit No. 36100, Special Condition 1, Federal Operating Permit O-2780, General Terms and Conditions, Special Conditions 1A and 12A, 40 CODE OF FEDERAL REGULATIONS § 60.112b(a)(2)(i)(B)(iii), and TEX. HEALTH & SAFETY CODE § 382.085(b)].		

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision March 19, 2007*

DATES					
Assigned	5-Feb-2007				
PCW	30-Mar-2007	Screening	26-Mar-2007	EPA Due	27-Oct-2007

RESPONDENT/FACILITY INFORMATION

Respondent	Explorer Pipeline Company		
Reg. Ent. Ref. No.	RN101954394		
Facility/Site Region	10-Beaumont	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	33100	No. of Violations	2
Docket No.	2007-0503-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Jason Kemp
Multi-Media		EC's Team	EnforcementTeam 5
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $2,700

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 20% Enhancement — *Subtotals 2, 3, & 7* $540

Notes: The Compliance History is enhanced by ten non-similar NOVs.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $0

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

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$150
Approx. Cost of Compliance	$3,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $3,240

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

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

Notes:

Final Penalty Amount $3,240

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $3,240

DEFERRAL — 20% Reduction — *Adjustment* -$648

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $2,592

Screening Date 26-Mar-2007 **Docket No.** 2007-0503-AIR-E **PCW**

Respondent Explorer Pipeline Company

Case ID No. 33100

Reg. Ent. Reference No. RN101954394

Media [Statute] Air

Enf. Coordinator Jason Kemp

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

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	10	20%
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 judgements 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) 20%

>> **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 Compliance History is enhanced by ten non-similar NOVs.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date	26-Mar-2007	**Docket No.** 2007-0503-AIR-E	**PCW**
Respondent	Explorer Pipeline Company		*Policy Revision 2 (September 2002)*
Case ID No.	33100		*PCW Revision March 19, 2007*
Reg. Ent. Reference No.	RN101954394		
Media [Statute]	Air		
Enf. Coordinator	Jason Kemp		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.201(a)(1)(A), 101.201(a)(1)(B), 101.201(c), and 122.143(4), Federal Operating Permit O-2780, General Terms and Conditions, Special Condition 2(F), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to determine if the emissions event was reportable, timely report an emissions event occurring on September 30, 2006 within 24 hours of discovery, and submit a final report no later than two weeks after the end of an emissions event, as documented in a record review conducted on December 5, 2006. Specifically, the initial report was to be submitted on or before October 1, 2006. The initial report was received on October 24, 2006. The final report was to be submitted on or before October 15, 2006. The final report was submitted on November 20, 2006.

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: Less than 30% of the rule was not met.

Adjustment $9,900

$100

Violation Events

Number of Violation Events 2

50 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $200

Two single events are recommended, one for each report.

Economic Benefit (EB) for this violation

Estimated EB Amount $50

Statutory Limit Test

Violation Final Penalty Total $240

This violation Final Assessed Penalty (adjusted for limits) $240

Economic Benefit Worksheet

Respondent Explorer Pipeline Company
Case ID No. 33100
Reg. Ent. Reference No. RN101954394
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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	$1,000	1-Oct-2006	1-Oct-2007	1.0	$50	n/a	$50
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
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 DELAYED costs: Estimated cost is for implementing training procedures to address the causes that led to the late reporting. The Date Required is the date the report was due, and the Final Date is the date the respondent is expected to have completed corrective actions.

Notes for AVOIDED costs:

Approx. Cost of Compliance $1,000

TOTAL $50

Screening Date	26-Mar-2007	**Docket No.** 2007-0503-AIR-E	**PCW**
Respondent	Explorer Pipeline Company		*Policy Revision 2 (September 2002)*
Case ID No.	33100		*PCW Revision March 19, 2007*
Reg. Ent. Reference No.	RN101954394		
Media [Statute]	Air		
Enf. Coordinator	Jason Kemp		

Violation Number 2

Rule Cite(s): 30 Tex. Admin. Code §§ 116.115(b)(2)(F), 116.115(c), and 101.20(1), and 122.143(4), New Source Review Permit No. 36100, Special Condition 1, Federal Operating Permit O 2780, General Terms and Conditions, Special Conditions 1A and 12A, 40 Code of Federal Regulations § 60.112b(a)(2)(i)(B)(iii), and Tex. Health & Safety Code § 382.085(b)

Violation Description: Failed to maintain an emission rate below the allowable emission limits and to properly operate a floating roof storage tank. Specifically, on September 30, 2006, over a period of 43 hours, Tank 131, Emission Point Number (EPN: T-131) emitted unauthorized emissions of approximately 1,881 pounds ("lbs") of volatile organic compounds ("VOC"). The permit limit is 3.75 pounds per hour ("lbs/hr") for VOC. The emissions event was caused by the floating roof of Tank 131 resting on the leg supports after partial emptying, while 996 barrels of gasoline remained inside. Since these emissions could have been foreseen and avoided by good design, operation and maintenance practices, the emissions do not meet the affirmative defense criteria specified in 30 Tex. Admin. Code § 101.222, as documented in an investigation conducted on December 5, 2006.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1

2 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $100

Statutory Limit Test

Violation Final Penalty Total $3,000

This violation Final Assessed Penalty (adjusted for limits) $3,000

Economic Benefit Worksheet

Respondent Explorer Pipeline Company
Case ID No. 33100
Reg. Ent. Reference No. RN101954394
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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	$2,000	30-Sep-2006	1-Oct-2007	1.0	$100	n/a	$100
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	Estimated cost is for implementing training procedures to address the causes that led to the emission event. The Date Required is the date of the emission event, and the Final Date is the date the respondent is expected to have completed corrective action.						
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: $2,000

TOTAL: $100

Compliance History

Customer/Respondent/Owner-Operator:	CN600424584	Explorer Pipeline Company	Classification: AVERAGE	Rating: 2.01
Regulated Entity:	RN101954394	PORT ARTHUR TANK FARM	Classification: AVERAGE	Site Rating: 0.56

ID Number(s):

AIR NEW SOURCE PERMITS	PERMIT	36100
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JE0160R
AIR NEW SOURCE PERMITS	AFS NUM	4824500172
WASTEWATER	PERMIT	WQ0002399000
WASTEWATER	PERMIT	TPDES0116891
WASTEWATER	PERMIT	TX0116891
ON SITE SEWAGE FACILITY	PERMIT	1230065
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31746
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD058260340
AIR OPERATING PERMITS	ACCOUNT NUMBER	JJ0160R
AIR OPERATING PERMITS	PERMIT	2780
AIR OPERATING PERMITS	ACCOUNT NUMBER	JE0160R

Location: 6300 W PORT ARTHUR RD, PORT ARTHUR, TX, 77640 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: March 26, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 26, 2002 to March 26, 2007

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

Name: Jason Kemp Phone: (512) 239-5610

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	04/09/2002	(87200)
2	04/25/2002	(230628)
3	05/30/2002	(230630)
4	06/26/2002	(230632)
5	07/29/2002	(230634)
6	08/19/2002	(230636)
7	10/01/2002	(230638)
8	10/23/2002	(230640)
9	12/02/2002	(230642)
10	12/13/2002	(230644)
11	01/24/2003	(230646)
12	02/18/2003	(230623)
13	03/21/2003	(230625)
14	04/25/2003	(325864)
15	05/30/2003	(325866)

16	07/03/2003	(325867)
17	07/23/2003	(325868)
18	09/02/2003	(325869)
19	10/07/2003	(325870)
20	10/07/2003	(325871)
21	11/19/2003	(325872)
22	12/18/2003	(254439)
23	12/30/2003	(258704)
24	01/20/2004	(325873)
25	01/20/2004	(325874)
26	02/27/2004	(325862)
27	04/16/2004	(325863)
28	04/16/2004	(325865)
29	06/01/2004	(366165)
30	08/02/2004	(366166)
31	08/02/2004	(366167)
32	08/25/2004	(282907)
33	10/01/2004	(366168)
34	10/01/2004	(366169)
35	11/08/2004	(389590)
36	11/08/2004	(389591)
37	01/14/2005	(389592)
38	01/14/2005	(389593)
39	02/28/2005	(430668)
40	04/01/2005	(430669)
41	05/25/2005	(430670)
42	05/25/2005	(430671)
43	06/27/2005	(430672)
44	07/28/2005	(430673)
45	08/19/2005	(447251)
46	10/10/2005	(491695)
47	10/10/2005	(491696)
48	12/06/2005	(491697)
49	12/15/2005	(491698)
50	02/10/2006	(491694)
51	02/10/2006	(491699)
52	04/14/2006	(505894)
53	04/14/2006	(505895)
54	05/30/2006	(463020)
55	07/28/2006	(528138)
56	07/28/2006	(528139)
57	07/28/2006	(528137)
58	08/28/2006	(489955)
59	09/27/2006	(528140)
60	09/27/2006	(528141)
61	10/26/2006	(551645)
62	11/21/2006	(551646)
63	12/04/2006	(551647)
64	01/03/2007	(535349)
65	01/18/2007	(551648)
66	01/30/2007	(532603)
67	02/20/2007	(551644)

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

Date: 09/30/2002 (230640)

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 (230642)

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: 03/31/2003 (325864)

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: 07/31/2003 (325869)

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: 11/30/2003 (325873)

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: 12/18/2003 (254439)

Self Report? NO Classification: Moderate

Rqmt Prov: PERMIT WQ-0002399
Description: Failure to report 40% noncompliances to the TNRCC within the required notification period.
Date: 02/28/2005 (430669)

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: 05/30/2006 (463020)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter Q 335.474[G]
30 TAC Chapter 335, SubChapter Q 335.479
Description: Failure to develop and maintain the Source Reduction and Waste Minimization Plan (SRWMP) on site as required.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.10(b)[G]
40 CFR Chapter 262, SubChapter I, PT 262, SubPT B 262.20(a)
Description: Failure to properly complete manifest #3620917 as required.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(1)[G]
Description: Failure to maintain complete hazardous waste determination records for waste streams, 0019489H, and FCVL205H.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(A)
30 TAC Chapter 335, SubChapter E 335.112(a)(8)
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(1)(ii)
40 CFR Chapter 265, SubChapter I, PT 265, SubPT B 265.17(a)
Description: Failure to post "No Smoking " signs in areas of ignition hazard at both container storage areas (NOR #02 & 24).
Date: 08/29/2006 (489955)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.1
Rqmt Prov: PERMIT 2399 OT, No 5, pg 12
Description: Failure by Explorer Pipeline to submit the results of total aluminum testing in accordance with the Other Requirements section of the permit.
Date: 01/31/2007 (551644)

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
EXPLORER PIPELINE COMPANY	§	
RN101954394	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0503-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 Explorer Pipeline Company ("Explorer") 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 Explorer appear before the Commission and together stipulate that:

1. Explorer owns and operates a petroleum storage and distribution plant at 6300 West Port Arthur Road in Port Arthur, Jefferson 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 Explorer agree that the Commission has jurisdiction to enter this Agreed Order, and that Explorer is subject to the Commission's jurisdiction.

4. Explorer received notice of the violations alleged in Section II ("Allegations") on or about February 4, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Explorer of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Two Hundred Forty Dollars ($3,240) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Explorer has paid Two Thousand Five Hundred Ninety-Two Dollars ($2,592) of the administrative penalty and Six Hundred Forty-Eight Dollars ($648) is deferred contingent

upon Explorer'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 Explorer fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Explorer 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 Explorer have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. 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 Explorer has not complied with one or more of the terms or conditions in this Agreed Order.

10. 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.

11. 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, Explorer is alleged to have:

1. Failed to determine if the emissions event was reportable, timely report an emissions event occurring on September 30, 2006 within 24 hours of discovery, and submit a final report no later than two weeks after the end of an emissions event, in violation of 30 TEX. ADMIN. CODE §§ 101.201(a)(1)(A), 101.201(a)(1)(B), 101.201(c), and 122.143(4), Federal Operating Permit O-2780, General Terms and Conditions, Special Condition 2(F), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on December 5, 2006. Specifically, the initial report was to be submitted on or before October 1, 2006. The report was received on October 24, 2006. The final report was to be submitted on or before October 15, 2006. The final report was submitted on November 20, 2006.

2. Failed to maintain an emission rate below the allowable emission limits and to properly operate a floating roof storage tank, in violation of 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 116.115(c), and 101.20(1), and 122.143(4), New Source Review Permit No. 36100, Special Condition 1, Federal Operating Permit O-2780, General Terms and Conditions, Special Conditions 1A and 12A, 40 CODE OF FEDERAL REGULATIONS § 60.112b(a)(2)(i)(B)(iii), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on December 5, 2006. Specifically, on September 30, 2006, over a period of 43 hours, Tank 131, Emission Point Number (EPN: T-131) emitted unauthorized emissions of approximately 1,881 pounds ("lbs") of volatile organic compounds ("VOC"). The permit limit is 3.75 pounds per hour ("lbs/hr") for VOC. The emissions event was caused by the floating roof of Tank 131 resting on the leg supports after partial emptying, while 996 barrels of gasoline remained inside. Since these

emissions could have been foreseen and avoided by good design, operation and maintenance practices, the emissions do not meet the affirmative defense criteria specified in 30 TEX. ADMIN. CODE § 101.222.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Explorer pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Explorer'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: Explorer Pipeline Company, Docket No. 2007-0503-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 Explorer shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, implement improvements to design, operation, or maintenance procedures, in order to address the late reporting that occurred on September 30, 2006 and to prevent the recurrence of same or similar incidents;

   b. Within 30 days after the effective date of this Agreed Order, implement improvements to design, operation, or maintenance procedures, in order to address the emissions event that occurred on September 30, 2006 and to prevent the recurrence of same or similar incidents; and

   c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are

significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon Explorer. Explorer 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 Explorer 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, Explorer's failure to comply is not a violation of this Agreed Order. Explorer shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Explorer shall notify the Executive Director within seven days after Explorer 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 Explorer shall be made in writing to the Executive Director. Extensions are not effective until Explorer 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 Explorer 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 Explorer, or three days after the date on which the Commission mails notice of the Order to Explorer, 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

_____ 8/29/07
For the Executive Director 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 indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

_____ 5/15/07
Signature Date

TIMOTHY C FELT PRESIDENT AND CEO
Name (Printed or typed) Title
Authorized Representative of
Explorer Pipeline Company

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.