

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-2191-AIR-E **TCEQ ID:** RN102775871 **CASE NO.:** 31963

RESPONDENT NAME: Ten Hi Gin, 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"/> IMMINENT 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: Cotton Gin, located at the intersection of County Roads 121 and 124, southwest of the City of Loop, Gaines County</p> <p>TYPE OF OPERATION: Cotton gin</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input 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 April 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, Team 4, MC 149, (512) 239-1044; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896 Respondent: Mr. Randy Floyd, President, Ten Hi Gin, Inc., PO Box K, Loop, Texas 79342 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 1, 2006</p> <p>Date of NOE Relating to this Case: November 9, 2006(NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>Failed to comply with annual throughput rate of 36,000 bales of cotton and annual particulate matter (PM) rate of 54.25 tons per year (tpy). Actual rates for the 2005-2006 ginning season (October 20 through January 15) were 53,815 bales of cotton and 68.61 tpy of PM [30 TEX. ADMIN. CODE § 116.115(c), Permit No. 2318, Special Conditions 1 and 2, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$2,500</p> <p>Total Deferred: \$500 <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: \$2,000</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 on September 30, 2006, Ten Hi Gin submitted an application for an amendment to Permit No. 2318 to increase throughput and maximum allowable emission rates as a corrective measure at the Plant.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a) Respond completely and adequately, as determined by the Air Permits Division, to all letters requesting information concerning the Permit No. 2318 amendment application within 30 days of the date of such letters, or by any other deadline specified in writing; and</p> <p>b) Within 90 days after the effective date of this Agreed Order, submit written certification that either authorization to conduct operation of the plant has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	13-Nov-2006	Screening	11-Dec-2006	EPA Due	
	PCW	12-Dec-2006				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ten Hi Gin, Inc.
Reg. Ent. Ref. No.	RN102775871
Facility/Site Region	7-Midland
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	31963	No. of Violations	1	
Docket No.	2006-2191-AIR-E	Order Type	1660	
Media Program(s)	Air Quality	Enf. Coordinator	Miriam Hall	
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 \$2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No change due to average performer classification.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes 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.

Total EB Amounts 0% Enhancement* Subtotal 6 \$0
 Approx. Cost of Compliance \$486 *Capped at the Total EB \$ Amount
\$5,000

SUM OF SUBTOTALS 1-7 Final Subtotal \$2,500

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 \$2,500

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$2,500

DEFERRAL 20% Reduction Adjustment -\$500

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

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$2,000

Screening Date 11-Dec-2006

Docket No. 2006-2191-AIR-E

PCW

Respondent Ten Hi Gin, Inc.

Policy Revision 2 (September 2002)

Case ID No. 31963

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102775871

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	0	0%
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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 11-Dec-2006

Docket No. 2006-2191-AIR-E

PCW

Respondent Ten Hi Gin, Inc.

Policy Revision 2 (September 2002)

Case ID No. 31963

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102775871

Media [Statute] Air Quality

Enf. Coordinator Miriam Hall

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Permit No. 2318, Special Conditions 1 and 2, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to comply with annual throughput rate of 36,000 bales of cotton and annual particular matter (PM) rate of 54.25 tons per year (tpy). Actual rates for the 2005-2006 ginning season (October 20 through January 15) were 53,815 bales of cotton and 68.61 tpy of PM.

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 significant emissions which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

87 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 as documented during the investigation on November 1, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$486

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Ten Hi Gin, Inc.
Case ID No. 31963
Reg. Ent. Reference No. RN102775871
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
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	20-Oct-2005	30-Sep-2007	1.9	\$486	n/a	\$486
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost for obtaining a permit amendment from the beginning of the 2005/2006 ginning season to projected compliance date.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$486

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TEN HI GIN, INC.
RN102775871**

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§
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§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2006-2191-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 Ten Hi Gin, Inc. ("Ten Hi Gin") 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 Ten Hi Gin appear before the Commission and together stipulate that:

1. Ten Hi Gin owns and operates a cotton gin at the intersection of County Roads 121 and 124, southwest of the City of Loop, in Gaines 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 Ten Hi Gin agree that the Commission has jurisdiction to enter this Agreed Order, and that Ten Hi Gin is subject to the Commission's jurisdiction.
4. Ten Hi Gin received notice of the violations alleged in Section II ("Allegations") on or about November 14, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ten Hi Gin of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Ten Hi Gin has paid Two Thousand Dollars (\$2,000) of the administrative penalty and Five

Hundred Dollars (\$500) is deferred contingent upon Ten Hi Gin'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 Ten Hi Gin fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Ten Hi Gin 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 Ten Hi Gin 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 on September 30, 2006, Ten Hi Gin submitted an application for an amendment to Permit No. 2318 to increase throughput and maximum allowable emission rates as a corrective measure at the Plant.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Ten Hi Gin 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, Ten Hi Gin is alleged to have failed to comply with annual throughput rate of 36,000 bales of cotton and annual particulate matter ("PM") rate of 54.25 tons per year ("tpy"), in violation of 30 TEX. ADMIN. CODE § 116.115(c), Permit No. 2318, Special Conditions 1 and 2, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 1, 2006. Actual rates for the 2005-2006 ginning season (October 20 through January 15) were 53,815 bales of cotton and 68.61 tpy of PM.

III. DENIALS

Ten Hi Gin generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Ten Hi Gin pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ten Hi Gin'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: Ten Hi Gin, Inc., Docket No. 2006-2191-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 Ten Hi Gin shall undertake the following technical requirements:
 - a. Respond completely and adequately, as determined by the Air Permits Division, to all letters requesting information concerning the Permit No. 2318 amendment application within 30 days of the date of such letters, or by any other deadline specified in writing; and
 - b. Within 90 days after the effective date of this Agreed Order, submit written certification that either authorization to conduct operation of the plant has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, 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."

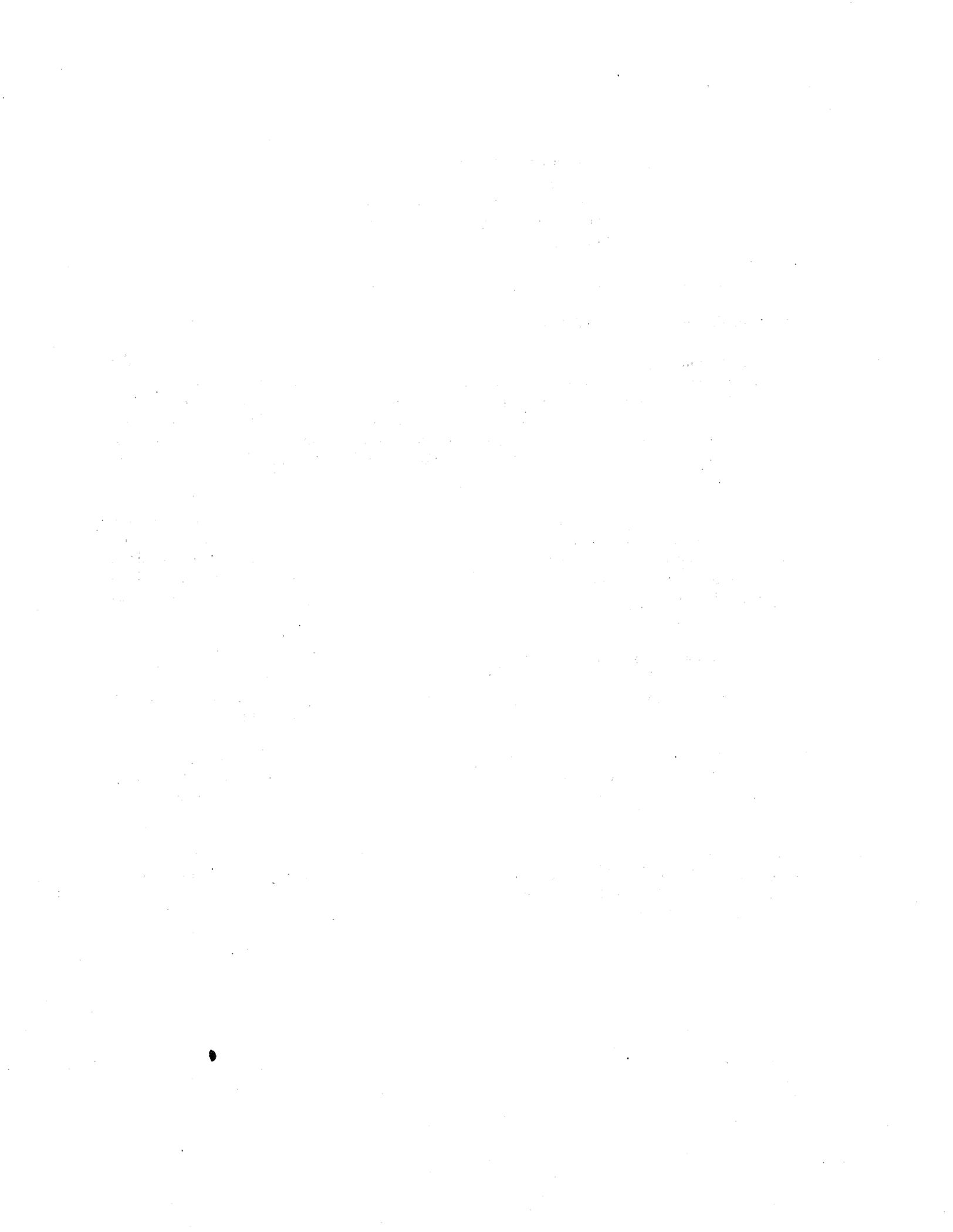
The certification shall be submitted to:

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 Quality Section, Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4, Suite 107
Midland, Texas 79705-5404

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



Ten Hi Gin, Inc.
DOCKET NO. 2006-2191-AIR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sedlin
For the Executive Director

8/23/2007
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.

Randy Floyd
Signature

8-3-07
Date

RANDY FLOYD
Name (Printed or typed)
Authorized Representative of
Ten Hi Gin, 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.

