EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1717-AIR-E **TCEQ ID:** RN100223312 **CASE NO.:** 31263

RESPONDENT NAME: Ponderosa Pine Energy Partners, Ltd.

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	X AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Johnson County Generation Facility, 831 Sparks Drive, Cleburne, Johnson County

TYPE OF OPERATION: Power generation and transmission

SMALL BUSINESS: __X__ Yes ____ 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 January 29, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Laurie Eaves, Enforcement Division, Enforcement Section I, MC 169, (512) 239-4495; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

TCEQ Field Investigator: Ms. Deana Hetherington, DFW Regional Office, MC R-04, (817) 588-5870

Respondent: Mr. Michael Mazowita, Associate Vice President, Ponderosa Pine Energy Partners, Ltd., 67 Park Place East, Morristown, New Jersey 07960
Mr. Richard G. Vicens, Vice President, Ponderosa Pine Energy Partners, Ltd., 67 Park Place East, Morristown, New Jersey 07960

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

Attachment: Site Compliance History

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint ___ Routine __ Enforcement Follow-up _X_ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** April 21, 2006 **Date of NOE Relating to this Case:** August 29, 2006 (NOE) **Background Facts:** This was a routine record review. One violation was documented. **AIR** Failed to certify compliance with the terms and conditions of Federal Operating Permit No. O-00543. Specifically, Ponderosa failed to timely submit a Permit Compliance Certification Form for the period of March 18, 2005 through December 21, 2005 which was due to the TCEQ by January 20, 2006 [TEX. HEALTH AND SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 122.146(2), and Federal Operating Permit No. O-00543, General Terms and Conditions].	**Total Assessed:** $2,500 **Total Deferred:** $500 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $2,000 **Site Compliance History Classification:** __High _X_ Avg. __Poor **Person Compliance History Classification:** __High _X_ Avg. __Poor **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Ponderosa submitted a Permit Compliance Certification Form for the period of March 18, 2005 through December 21, 2005 to the TCEQ on April 26, 2006.

Attachment: Site Compliance History

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	05-Sep-2006				
PCW	13-Sep-2006	Screening	13-Sep-2006	EPA Due	26-May-2007

RESPONDENT/FACILITY INFORMATION

Respondent	Ponderosa Pine Energy Partners, Ltd.		
Reg. Ent. Ref. No.	RN100223312		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major Source

CASE INFORMATION

Enf./Case ID No.	31263	No. of Violations	1
Docket No.	2006-1717-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Laurie Eaves
Multi-Media		EC's Team	Enforcement Team 1
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 25% Enhancement *Subtotals 2, 3, & 7* $625

Notes: The Respondent was issued one Agreed Order with denial language and one NOV for same or similar violation.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 25% Reduction *Subtotal 5* -$625

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

Notes: The Respondent achieved compliance on April 26, 2006.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

Total EB Amounts	$3
Approx. Cost of Compliance	$200

**Capped at the Total EB $ Amount*

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 indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $2,000

Screening Date	13-Sep-2006	**Docket No.** 2006-1717-AIR-E	**PCW**
Respondent	Ponderosa Pine Energy Partners, Ltd.		*Policy Revision 2 (September 2002)*
Case ID No.	31263		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN100223312		
Media [Statute]	Air Quality		
Enf. Coordinator	Laurie Eaves		

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)*	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	1	20%
	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*	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) **25%**

>> 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 Respondent was issued one Agreed Order with denial language and one NOV for same or similar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **25%**

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	13-Sep-2006
Docket No.	2006-1717-AIR-E
Respondent	Ponderosa Pine Energy Partners, Ltd.
Case ID No.	31263
Reg. Ent. Reference No.	RN100223312
Media [Statute]	Air Quality
Enf. Coordinator	Laurie Eaves

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 122.146(2), and Federal Operating Permit No. O-00543, General Terms and Conditions

Secondary Rule Cite(s) Tex. Health and Safety Code § 382.085(b)

Violation Description Failure to submit an annual compliance certification form for Federal Operating Permit No. O-00543 in a timely manner. Specifically, the annual compliance certification for the period March 18, 2005 through December 21, 2005 was due by January 20, 2006, but was not received until April 26, 2006.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 1

mark only one use a small 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 $3

Statutory Limit Test

Violation Final Penalty Total $2,500

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

Economic Benefit Worksheet

Respondent: Ponderosa Pine Energy Partners, Ltd.
Case ID No.: 31263
Reg. Ent. Reference No.: RN100223312
Media [Statute]: Air Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$200	20-Jan-2006	26-Apr-2006	0.3	$3	n/a	$3
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
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: The delayed costs include the cost to prepare and submit a compliance certification report. The date required is the date that the complete compliance certification was due. The final date is the date compliance was achieved.

Notes for AVOIDED costs:

Approx. Cost of Compliance: $200

TOTAL: $3

Compliance History

Customer/Respondent/Owner-Operator:	CN600131437	Ponderosa Pine Energy Partners, Ltd	Classification:	Average	Rating: 3.35
Regulated Entity:	RN100223312	JOHNSON COUNTY GENERATION FACILITY	Classification:	Average	Site Rating: 3.43

ID Number(s):

AIR OPERATING PERMITS ACCOUNT NUMBER JH0230L
AIR OPERATING PERMITS PERMIT 543
AIR NEW SOURCE PERMITS PERMIT 25384
AIR NEW SOURCE PERMITS ACCOUNT NUMBER JH0230L
AIR NEW SOURCE PERMITS AFS NUM 0034
AIR NEW SOURCE PERMITS PERMIT PSDTX839
STORMWATER PERMIT TXR05T013

Location: 831 SPARKS DR, CLEBURNE, JOHNSON COUNTY Rating Date: September 1, 2006 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: September 13, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 13, 2001 to September 13, 2006

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

Name: Laurie Eaves Phone: 512/239-4495

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.

Effective Date: 08/13/2004 ADMINORDER 2003-1535-AIR-E

Classification: Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.146(1)
30 TAC Chapter 122, SubChapter B 122.146(2)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failed to certify compliance with the terms and conditions of the operating permit within 30 days following the end of the 12 month reporting period, March 18, 2002 to March 17, 2003.

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 08/29/2006 (465643)
2 07/08/2003 (133806)
3 05/24/2005 (393027)
4 07/07/2003 (133807)
5 02/10/2004 (261431)
6 04/15/2004 (268315)
7 09/25/2001 (87749)
8 12/07/2001 (87750)
9 05/05/2005 (377413)
10 08/27/2003 (146626)
11 08/30/2004 (289914)

12 04/15/2004 (268952)
13 08/10/2004 (286247)
14 02/03/2003 (22389)
15 05/10/2006 (465253)

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

Date: 08/31/2004 (289914)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
5C THC Chapter 382, SubChapter A 382.085(b)
Description: Failure to submit annual compliance in a timely manner.

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 PONDEROSA PINE	§	**TEXAS COMMISSION ON**
ENERGY PARTNERS, LTD.	§	
RN100223312	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1717-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 Ponderosa Pine Energy Partners, Ltd. ("Ponderosa") 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 Ponderosa appear before the Commission and together stipulate that:

1. Ponderosa owns and operates a power generation and transmission facility located at 831 Sparks Drive in Cleburne, Johnson 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 Ponderosa agree that the Commission has jurisdiction to enter this Agreed Order, and that Ponderosa is subject to the Commission's jurisdiction.

4. Ponderosa received notice of the violations alleged in Section II ("Allegations") on or about September 3, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ponderosa 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"). Ponderosa has paid Two Thousand Dollars ($2,000) of the administrative penalty and Five Hundred Dollars ($500) is deferred contingent upon Ponderosa'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 Ponderosa fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Ponderosa 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 Ponderosa 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 Ponderosa submitted a Permit Compliance Certification Form for the period of March 18, 2005 through December 21, 2005 to the TCEQ on April 26, 2006.

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 Ponderosa 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, Ponderosa is alleged to have failed to certify compliance with the terms and conditions of Federal Operating Permit No. O-00543, in violation of TEX. HEALTH AND SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 122.146(2), and Federal Operating Permit No. O-00543, General Terms and Conditions, as documented during a record review conducted on April 21, 2006. Specifically, Ponderosa failed to timely submit a Permit Compliance Certification Form for the period of March 18, 2005 through December 21, 2005 which was due to the TCEQ by January 20, 2006.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Ponderosa pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ponderosa'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: Ponderosa Pine Energy Partners, Ltd., Docket No. 2006-1717-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. The provisions of this Agreed Order shall apply to and be binding upon Ponderosa. Ponderosa 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.

3. This Agreed Order, issued by the Commission, shall not be admissible against Ponderosa 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.

4. 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.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Ponderosa, or three days after the date on which the Commission mails notice of the Order to Ponderosa, 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

_____ 2/26/07
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, 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.

_____ October 30, 2006
Signature Date

Richard G. Vicens Vice President
Name (Printed or typed) Title
Authorized Representative of
Ponderosa Pine Energy Partners, Ltd.

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.

October 30, 2006

Richard G. Vicens

Vice President