EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1079-AIR-E **TCEQ ID:** RN100212612 **CASE NO.:** 30531

RESPONDENT NAME: Red Ewald, Inc.

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: Red Ewald, 2669 South Highway 181, Karnes City, Karnes County

TYPE OF OPERATION: Fiberglass reinforced tanks and piping manufacturing plant

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 22, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Section III, MC R-13, (210) 403-4006; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Field Investigator: Mr. Max Guinther, San Antonio Regional Office, MC R-13, (210) 490-3096
Respondent: Mr. Mark Witte, President, Red Ewald, Inc., P.O. Box 519, Karnes City, Texas 78118-0519
Respondent's Attorney: Not represented by counsel on this enforcement matter

Attachment: Site Compliance History

RESPONDENT'S NAME: Red Ewald, Inc.
DOCKET NO.: 2006-1079-AIR-E

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:** July 12, 2006 **Date of NOE Relating to this Case:** July 20, 2006 (NOE) **Background Facts:** This was a routine record review. One violation was documented. **AIR** Failed to submit an annual compliance certification within 30 days after the end of the May 25, 2005 to December 29, 2005 (date the referenced permit was voided) certification period. Specifically, the report was required to be submitted by January 28, 2006, but was not submitted until July 7, 2006 [30 TEX. ADMIN. CODE §§ 122.146(2) and 122.143(4), General Operating Permit No. O-01006, General Terms and Conditions and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $1,625 **Total Deferred:** $325 __X__ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $1,300 **Site Compliance History Classification:** __X__ High ___Avg. ___Poor **Person Compliance History Classification:** __X__ High ___Avg. ___Poor **Major Source:** __X__ Yes ___ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that REI submitted the annual compliance certification on July 7, 2006.

Attachment: Site Compliance History

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	24-Jul-2006				
PCW	28-Jul-2006	Screening	31-Jul-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Red Ewald, Inc.		
Reg. Ent. Ref. No.	RN100212612		
Facility/Site Region	13-San Antonio	Major/Minor Source	Major Source

CASE INFORMATION

Enf./Case ID No.	30531	No. of Violations	1
Docket No.	2006-1079-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Trina Grieco
Multi-Media		EC's Team	Enforcement Team 6
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 -10% Enhancement *Subtotals 2, 3, & 7* -$250

Notes: Penalty reduction due to High Performer Classification.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet 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 July 7, 2006.

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

**Capped at the Total EB $ Amount*

Total EB Amounts	$7
Approx. Cost of Compliance	$300

SUM OF SUBTOTALS 1-7 Final Subtotal $1,625

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 $1,625

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $1,625

DEFERRAL 20% Reduction Adjustment -$325

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 $1,300

Screening Date	31-Jul-2006	**Docket No.** 2006-1079-AIR-E	**PCW**
Respondent	Red Ewald, Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	30531		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN100212612		
Media [Statute]	Air Quality		
Enf. Coordinator	Trina Grieco		

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 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) **0%**

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) **0%**

>> Compliance History *Person* Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) **-10%**

>> Compliance History Summary

Compliance History Notes Penalty reduction due to High Performer Classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **-10%**

PCW

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

Screening Date	31-Jul-2006
Docket No.	2006-1079-AIR-E
Respondent	Red Ewald, Inc.
Case ID No.	30531
Reg. Ent. Reference No.	RN100212612
Media [Statute]	Air Quality
Enf. Coordinator	Trina Grieco

Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 122.146(2)
Secondary Rule Cite(s)	30 Tex. Admin. Code § 122.143(4), General Operating Permit No. O-01006, General Terms and Conditions and Tex. Health & Safety Code § 382.085(b)
Violation Description	Failed to submit an annual compliance certification within 30 days after the end of the May 25, 2005 to December 29, 2005 (date the referenced permit was voided) certification period. Specifically, the report was required to be submitted by January 28, 2006, but was not submitted until July 7, 2006.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: Failure to submit the annual compliance certification means that 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	x
single event	

Violation Base Penalty $2,500

One annual event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $7

Statutory Limit Test

Violation Final Penalty Total $1,625

This violation Final Assessed Penalty (adjusted for limits) $1,625

Economic Benefit Worksheet

Respondent: Red Ewald, Inc.
Case ID No.: 30531
Reg. Ent. Reference No.: RN100212612
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				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)	$300	28-Jan-2006	07-Jul-2006	0.4	$7	n/a	$7
Notes for DELAYED costs	Estimated expense to prepare and submit the annual compliance certification. Date required based on the certification due date. Final date based on 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: $300

TOTAL: $7

Compliance History

Customer/Respondent/Owner-Operator:	CN600126270	Red Ewald, Inc.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN100212612	RED EWALD	Classification: HIGH	Site Rating: 0.00

ID Number(s):		
AIR OPERATING PERMITS	ACCOUNT NUMBER	KA0018C
AIR OPERATING PERMITS	PERMIT	1006
AIR OPERATING PERMITS	PERMIT	2705
AIR NEW SOURCE PERMITS	PERMIT	17945
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	KA0018C
AIR NEW SOURCE PERMITS	AFS NUM	0011
PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	3022
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD041469990
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	32906
STORMWATER	PERMIT	TXR05P820

Location:	2669 S HWY 181, KARNES CITY, TX, 78118	Rating Date: September 01 05	Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	July 27, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 27, 2001 to July 27, 2006		

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

Name: Trina Grieco Phone: (210) 403-4006

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 07/29/2003 (146305)
2 07/15/2004 (280358)
3 07/08/2004 (279848)
4 07/15/2005 (394603)
5 06/13/2002 (2437)
6 07/20/2006 (486498)
7 01/17/2002 (87893)

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

N/A

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**
RED EWALD, INC.	§	
RN100212612	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1079-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 Red Ewald, Inc. ("REI") 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 REI appear before the Commission and together stipulate that:

1. REI owns and operates a fiberglass reinforced tanks and piping manufacturing plant at 2669 South Highway 181 in Karnes City, Karnes 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 REI agree that the Commission has jurisdiction to enter this Agreed Order, and that REI is subject to the Commission's jurisdiction.

4. REI received notice of the violations alleged in Section II ("Allegations") on or about July 25, 2006.

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

6. An administrative penalty in the amount of One Thousand Six Hundred Twenty-Five Dollars ($1,625) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). REI has paid One Thousand Three Hundred Dollars ($1,300) of the administrative penalty and Three Hundred Twenty-Five Dollars ($325) is deferred contingent upon REI'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 REI fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require REI 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 REI 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 REI submitted the annual compliance certification on July 7, 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 REI 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, REI is alleged to have failed to submit an annual compliance certification within 30 days after the end of the May 25, 2005 to December 29, 2005 (date the referenced permit was voided) certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.146(2) and 122.143(4), General Operating Permit No. O-01006, General Terms and Conditions and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on July 12, 2006. Specifically, the report was required to be submitted by January 28, 2006, but was not submitted until July 7, 2006.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that REI pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and REI'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: Red Ewald, Inc., Docket No. 2006-1079-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 REI. REI 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 REI 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 REI, or three days after the date on which the Commission mails notice of the Order to REI, 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

For the Executive Director

2/6/07
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

Mark W. Witte
Signature

11/09/06
Date

Mark W. Witte
Name (Printed or typed)
Authorized Representative of
Red Ewald, 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.