EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1588-IHW-E **TCEQ ID:** RN102448024 **CASE NO.:** 31086

RESPONDENT NAME: Flower Grove Cooperative Gin

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	__AIR	X 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: Flower Grove Cooperative Gin, 4003 East Farm-to-Market Road 2002, Ackerly, Martin County

TYPE OF OPERATION: Cotton gin

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 March 19, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Colin Barth, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-0086; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Field Investigator: Ms. Debbie McMaryion, Midland Regional Office, MC R-07, (432) 570-1359
Respondent: Mr. Rick Timmins, Manager, Flower Grove Cooperative Gin, 4003 East Farm-to-Market Road 2002, Ackerly, Texas 79713
Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT'S NAME: Flower Grove Cooperative Gin
DOCKET NO.: 2006-1588-IHW-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** June 19, 2006 **Date of NOE Relating to this Case:** August 8, 2006 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **WASTE** Failed to prevent the unauthorized collection, handling, storage, or disposal of industrial waste in such a manner so as to cause the endangerment of the public health and welfare. Specifically, approximately six to seven acres containing burr piles caught fire and burned for approximately 40 days prior to being extinguished [30 TEX. ADMIN. CODE § 335.4(3)]	**Total Assessed:** $900 **Total Deferred:** $180 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $720 **Site Compliance History Classification:** _X_ High __ Avg. __ Poor **Person Compliance History Classification:** _X_ High __ Avg. __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately after the effective date of this Agreed Order, cease to cause, suffer, allow, or permit any additional industrial waste to be collected, handled, stored or disposed of in a manner that will cause endangerment of the public health and welfare; b. Within 30 days after the effective date of this Agreed Order, submit a plan detailing how Flower Grove will store the burrs and prevent burr piles from catching fire in the future; and c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions a. and b.

Attachment: Site Compliance History

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES **Assigned** 21-Aug-2006 **PCW** 02-Oct-2006 **Screening** 05-Sept-2006 **EPA Due**

RESPONDENT/FACILITY INFORMATION

Respondent	Flower Grove Cooperative Gin		
Reg. Ent. Ref. No.	RN102448024		
Facility/Site Region	7-Midland	**Major/Minor Source**	Minor Source

CASE INFORMATION

Enf./Case ID No.	31086	**No. of Violations**	1
Docket No.	2006-1588-IHW-E	**Order Type**	1660
Media Program(s)	Industrial and Hazardous Waste	**Enf. Coordinator**	Colin Barth
Multi-Media		**EC's Team**	Enforcement Team 8
Admin. Penalty $ Limit Minimum	$0	**Maximum**	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) ***Subtotal 1*** **$1,000**

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*** **-$100**

Notes: Reduction due to high performer classification.

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 a small x)*

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

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

**Capped at the Total EB $ Amount*

Total EB Amounts	$131
Approx. Cost of Compliance	$3,000

SUM OF SUBTOTALS 1-7 **Final Subtotal** **$900**

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 **$900**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **$900**

DEFERRAL **20%** Reduction **Adjustment** **-$180**

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 **$720**

Screening Date 05-Sept-2006 **Docket No.** 2006-1588-IHW-E **PCW**
Respondent Flower Grove Cooperative Gin *Policy Revision 2 (September 2002)*
Case ID No. 31086 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102448024
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Colin Barth

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 Reduction due to high performer classification.

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

Screening Date 05-Sept-2006 **Docket No.** 2006-1588-IHW-E **PCW**

Respondent Flower Grove Cooperative Gin *Policy Revision 2 (September 2002)*

Case ID No. 31086 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN102448024

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Colin Barth

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 335.4(3)

Secondary Rule Cite(s)

Violation Description Failure to prevent the unauthorized collection, handling, storage, or disposal of industrial waste in such a manner so as to cause the endangerment of the public health and welfare, as documented during an investigation conducted on June 19, 2006. Specifically, approximately six to seven acres containing burr piles caught fire and burned for approximately 40 days prior to being extinguished.

Base Penalty $10,000

>> **Environmental, Property and Human Health Matrix**

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 10%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollution as a result of this violation.

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events 1

mark only one use a small x	
daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the investigation date of June 19, 2006 to the screening date of September 5, 2006.

Economic Benefit (EB) for this violation

Estimated EB Amount $131

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Economic Benefit Worksheet

Respondent Flower Grove Cooperative Gin
Case ID No. 31086
Reg. Ent. Reference No. RN102448024
Media [Statute] Industrial and Hazardous Waste
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	$3,000	19-Jun-2006	03-May-2007	0.9	$131	n/a	$131
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs Estimated cost to properly dispose of burr piles, from the investigation date to the estimated date of compliance.

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 $3,000

TOTAL $131

Compliance History

Customer/Respondent/Owner-Operator:	CN600687727	Flower Grove Cooperative Gin	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN102448024	FLOWER GROVE COOPERATIVE GIN	Classification: HIGH	Site Rating: 0.00

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	41165
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	MF0007K

Location: 4003 E FM 2002, ACKERLY, TX, 79713 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 07 - MIDLAND

Date Compliance History Prepared: October 02, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 02, 2001 to October 02, 2006

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

Name: Colin Barth Phone: 512 239 0086

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 08/08/2006 (490238)

N/A

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**
FLOWER GROVE COOPERATIVE	§	
GIN	§	**ENVIRONMENTAL QUALITY**
RN102448024		

AGREED ORDER
DOCKET NO. 2006-1588-IHW-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 Flower Grove Cooperative Gin ("Flower Grove") under the authority of the TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Flower Grove appear before the Commission and together stipulate that:

1. Flower Grove owns and operates a cotton gin at 4003 East Farm-to-Market Road 2002 in Ackerly, Martin County, Texas (the "Facility").

2. The Facility involves the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. The Commission and Flower Grove agree that the Commission has jurisdiction to enter this Agreed Order, and that Flower Grove is subject to the Commission's jurisdiction.

4. Flower Grove received notice of the violations alleged in Section II ("Allegations") on or about August 13, 2006.

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

6. An administrative penalty in the amount of Nine Hundred Dollars ($900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Flower Grove has paid Seven Hundred Twenty Dollars ($720) of the administrative penalty and One Hundred Eighty Dollars ($180) is deferred contingent upon Flower Grove'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 Flower Grove fails to timely and satisfactorily comply with all

requirements of this Agreed Order, the Executive Director may require Flower Grove 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 Flower Grove 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 Flower Grove 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 Facility, Flower Grove is alleged to have failed to prevent the unauthorized collection, handling, storage, or disposal of industrial waste in such a manner so as to cause the endangerment of the public health and welfare, in violation of 30 TEX. ADMIN. CODE § 335.4(3), as documented during an investigation conducted on June 19, 2006. Specifically, approximately six to seven acres containing burr piles caught fire and burned for approximately 40 days prior to being extinguished.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Flower Grove pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Flower Grove'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: Flower Grove Cooperative Gin, Docket No. 2006-1588-IHW-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 Flower Grove shall undertake the following technical requirements:

a. Immediately after the effective date of this Agreed Order, cease to cause, suffer, allow, or permit any additional industrial waste to be collected, handled, stored or disposed of in a manner that will cause endangerment of the public health and welfare in violation of 30 TEX. ADMIN. CODE §§ 335.4(3);

b. Within 30 days after the effective date of this Agreed Order, submit a plan detailing how Flower Grove will store the burrs and prevent burr piles from catching fire in the future; and

c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 2.a. through 2.b. as described below:

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."

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street., Bldg. 4-107
Midland, Texas 79705-5451

3. The provisions of this Agreed Order shall apply to and be binding upon Flower Grove. Flower Grove is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

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

4/12/07
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.

Signature

3-30-07
Date

Kevin Cave
Name (Printed or typed)
Authorized Representative of
Flower Grove Cooperative Gin

Board Member
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.