

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2007-0201-IWD-E **TCEQ ID:** RN102186236 **CASE NO.:** 32572

**RESPONDENT NAME:** Matheson Tri-Gas, Inc.

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input 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 checked="" 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Matheson Tri-Gas, 3680 North Interstate Highway 35 East, Waxahachie, Ellis County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> No complaints were received. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on May 28, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896  <b>Respondent:</b> Mr. Stephen I. Stroud, General Counsel, Matheson, Tri-Gas, Inc., 150 Allen Road, Suite 302, Basking Ridge, New Jersey 07920  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 11, 2007</p> <p><b>Date of NOE Relating to this Case:</b> January 31, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine record review. One violation was documented.</p> <p><b>WATER</b></p> <p>Failed to comply with the daily average permitted limits of 0.2 milligrams per liter ("mg/L") for total chlorine residual ("Cl<sub>2</sub>"). Specifically, the reported values were as follows: October 2005 - 0.24 mg/L; November 2005 - 0.3 mg/L; March 2006 - 0.3 mg/L; and April 2006 - 0.33 mg/L [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004112000, Effluent Limitations and Monitoring Requirements, No. 1, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a)].</p>	<p><b>Total Assessed:</b> \$2,780</p> <p><b>Total Deferred:</b> \$556  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,224</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on or about May 1, 2006 Matheson implemented the following corrective measures:</p> <p>a. Returned to compliance with its permitted effluent limits; and</p> <p>b. Replaced the oxidation reduction potential probe which was the main cause of the total chlorine residual ("Cl<sub>2</sub>") exceedances and included the probe on an annual replacement program.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	5-Feb-2007	<b>Screening</b>	6-Feb-2007	<b>EPA Due</b>	
	<b>PCW</b>	8-Feb-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Matheson Tri-Gas, Inc.
<b>Reg. Ent. Ref. No.</b>	RN102186236
<b>Facility/Site Region</b>	4-Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	32572	<b>No. of Violations</b>	1
<b>Docket No.</b>	2007-0201-IWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply**  Reduction **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="checkbox"/>	(mark with x)

**Notes**

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

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

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

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

Screening Date 6-Feb-2007

Docket No. 2007-0201-IWD-E

PCW

Respondent Matheson Tri-Gas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32572

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102186236

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

### 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)	13	65%
	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)	1	-1%
	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%
<i>Please Enter Yes or No</i>			
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) 64%

>> 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 self-reported thirteen months of effluent violations and submitted one Notice of Intent.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 64%

Screening Date 6-Feb-2007

Docket No. 2007-0201-IWD-E

PCW

Respondent Matheson Tri-Gas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32572

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102186236

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) TPDES Permit No. WQ0004112000, Effluent Limitations and Monitoring Requirements, No. 1, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)

Violation Description

Failed to comply with the daily average permitted limits of 0.2 milligrams per liter ("mg/L") for total chlorine residual ("Cl2"). Specifically, the reported values were as follows: 10/2005 - 0.24 mg/L; 11/2005 - 0.3 mg/L; 03/2006 - 0.3 mg/L; and 04/2006 - 0.33 mg/L.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to comply with the permitted limits for Cl2 resulted in the exposure of insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment as the result of the excursions.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

122 Number of violation days

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two quarterly events are recommended based on the months the maximum permitted limits were exceeded.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$58

Violation Final Penalty Total \$2,780

This violation Final Assessed Penalty (adjusted for limits) \$2,780

## Economic Benefit Worksheet

**Respondent:** Matheson Tri-Gas, Inc.  
**Case ID No.:** 32572  
**Reg. Ent. Reference No.:** RN102186236  
**Media:** Water 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
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Item Description: No commas or \$

### 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)	\$2,000	1-Oct-2005	1-May-2006	0.6	\$58	n/a	\$58

Notes for DELAYED costs

Estimated cost to provide additional oversight and sampling which may have alleviated or prevented the noncompliance. Date Required is the first day of non-compliance, Final Date is 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

\$2,000

**TOTAL**

\$58

# Compliance History

Customer/Respondent/Owner-Operator:	CN600591911 Matheson Tri-Gas, Inc.	Classification: AVERAGE	Rating: 2.27
Regulated Entity:	RN102186236 MATHESON TRI-GAS	Classification: AVERAGE	Site Rating: 0.73
	WASTEWATER	PERMIT	WQ0004112000
	WASTEWATER	PERMIT	TPDES0118745
	WASTEWATER	PERMIT	TX0118745
	STORMWATER	PERMIT	TXR05S096
ID Number(s):			
Location:	3680 N I 35 E, WAXAHACHIE, TX, 75165		Rating Date: September 01 06 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	February 06, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 06, 2002 to February 06, 2007		

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No  |
| 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	06/07/2006	(506268)
2	05/12/2006	(506269)
3	02/07/2002	(233735)
4	02/05/2003	(233736)
5	03/11/2002	(233738)
6	03/07/2003	(233739)
7	04/08/2002	(233741)
8	04/15/2003	(233742)
9	03/15/2005	(389979)
10	05/14/2002	(233744)
11	11/15/2004	(389980)
12	06/07/2002	(233746)
13	01/18/2005	(389981)
14	07/11/2002	(233748)
15	08/08/2002	(233751)
16	09/06/2002	(233754)
17	07/13/2006	(528501)
18	08/08/2006	(528502)
19	10/07/2002	(233756)
20	09/12/2006	(528503)
21	08/05/2005	(447523)
22	09/08/2005	(447524)
23	11/08/2002	(233759)
24	02/17/2006	(492456)

25 03/14/2006 (492457)  
 26 12/12/2002 (233761)  
 27 10/12/2005 (492458)  
 28 11/10/2005 (492459)  
 29 01/13/2003 (233764)  
 30 12/13/2005 (492460)  
 31 01/09/2006 (492461)  
 32 05/03/2006 (451861)  
 33 01/31/2007 (536629)  
 34 02/14/2005 (427488)  
 35 04/15/2005 (427489)  
 36 05/12/2005 (427490)  
 37 07/06/2005 (427491)  
 38 07/22/2005 (427492)  
 39 02/09/2004 (327165)  
 40 03/12/2004 (327166)  
 41 04/15/2004 (327167)  
 42 05/13/2003 (327168)  
 43 05/17/2004 (366906)  
 44 06/09/2003 (327169)  
 45 07/08/2004 (366907)  
 46 08/10/2004 (366908)  
 47 06/16/2004 (327170)  
 48 09/09/2004 (366909)  
 49 07/10/2003 (327171)  
 50 10/14/2004 (366910)  
 51 08/08/2003 (327172)  
 52 09/04/2003 (327173)  
 53 10/10/2003 (327174)  
 54 11/13/2003 (327175)  
 55 12/11/2003 (327176)  
 56 01/08/2004 (327177)  
 57 04/06/2006 (506266)  
 58 05/12/2006 (506267)

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

Date: 04/30/2006 (506267)  
 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: 02/28/2002 (233738)  
 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: 03/31/2002 (233741)  
 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: 02/28/2005 (389979)  
 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: 11/30/2002 (233761)  
 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: 09/30/2005 (492458)  
 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: 10/31/2005 (492459)  
 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: 11/30/2005 (492460)  
 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: 06/30/2005 (427492)  
 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: 05/31/2003 (327169)  
 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: 07/31/2004 (366908)  
 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: 05/31/2004 (327170)  
 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: 03/31/2006 (506266)  
 Self Report? YES Classification: Moderate

F. Environmental audits.

Notice of Intent Date: 02/09/2004 (263381)  
 No DOV Associated

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  
ENFORCEMENT ACTION  
CONCERNING  
MATHESON TRI-GAS, INC.  
RN102186236**

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§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-0201-IWD-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 Matheson Tri-Gas, Inc. ("Matheson") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Matheson appear before the Commission and together stipulate that:

1. Matheson owns and operates a wastewater treatment plant at 3680 North Interstate Highway 35 East in Waxahachie, Ellis County, Texas (the "Facility").
2. Matheson has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Matheson agree that the Commission has jurisdiction to enter this Agreed Order, and that Matheson is subject to the Commission's jurisdiction.
4. Matheson received notice of the violations alleged in Section II ("Allegations") on or about February 5, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Matheson of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Seven Hundred Eighty Dollars (\$2,780) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Matheson has paid Two Thousand Two Hundred Twenty-Four Dollars (\$2,224) of the administrative penalty and Five Hundred Fifty-Six Dollars (\$556) is deferred contingent upon Matheson'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 Matheson fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Matheson 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 Matheson 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 or about May 1, 2006 Matheson implemented the following corrective measures:
  - a. Returned to compliance with its permitted effluent limits; and
  - b. Replaced the oxidation reduction potential probe which was the main cause of the total chlorine residual ("Cl<sub>2</sub>") exceedances and included the probe on an annual replacement program.
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 Matheson 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 Facility, Matheson is alleged to have failed to comply with the daily average permitted limits of 0.2 milligrams per liter ("mg/L") for Cl<sub>2</sub>, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004112000, Effluent Limitations and Monitoring Requirements, No. 1, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on January 11, 2007. Specifically, the reported values were as follows: October 2005 - 0.24 mg/L; November 2005 - 0.3 mg/L; March 2006 - 0.3 mg/L; and April 2006 - 0.33 mg/L.

## III. DENIALS

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



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Matheson pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Matheson'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: Matheson Tri-Gas, Inc., Docket No. 2007-0201-IWD-E" to:

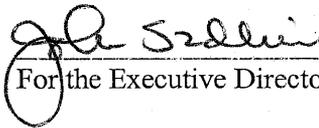
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon Matheson. Matheson is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Matheson 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 Matheson, or three days after the date on which the Commission mails notice of the Order to Matheson, 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

7/17/07  
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

03-15-07  
Date

Stephen I. Stroud  
Name (Printed or typed)  
Authorized Representative of  
Matheson Tri-Gas, Inc.

General Counsel  
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.

