EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0118-AIR-E **TCEQ ID:** RN102519584 **CASE NO.:** 32368

RESPONDENT NAME: Watco Tanks, Inc.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Watco Tanks, FM 539 Plant, 5877 Farm-to-Market Road 539, Floresville, Wilson County

TYPE OF OPERATION: Metal tank painting and refinishing

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 May 14, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Lindsey Jones, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-4930; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. Wally Watson, President, Watco Tanks, Inc., 5877 Farm-to-Market Road 539, Floresville, Texas 78114

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

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:** November 14 through 20, 2006 **Date of NOE Relating to this Case:** January 9, 2007 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **AIR** Failed to submit an application for a Title V Federal Operating Permit ("FOP") and continued to operate without permit authorization. Specifically, the emission calculations presented in its initial New Source Review permit required Watco to obtain a FOP before the February 1, 1998 deadline [30 TEX. ADMIN. CODE §§ 122.130(a) and 122.121 and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.054].	**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_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, submit an initial Operating Permit application as described by 30 TEX. ADMIN. CODE § 122.130(a) to the TCEQ Air Permits Division; b. Within 60 days after the effective date of this Agreed Order, submit a technically complete supplemental information application as described in 30 TEX. ADMIN. CODE § 122.130(b)(2) and (3) with reference to the initial application in paragraph 2.a. (if applicable); c. Respond completely and adequately, as determined by the Air Permits Division, to all letters requesting information concerning any Operating Permit application within 30 days of the date of such letters, or by any other deadline specified in writing; and d. Within 345 days after the effective date of the Agreed Order, certify compliance with Commission rules regarding authorization to operate a source of air emissions under the Operating Permits program or cease operations until appropriate authorization is obtained.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision December 8, 2006*

TCEQ

DATES					
Assigned	23-Jan-2007				
PCW	26-Jan-2007	Screening	24-Jan-2007	EPA Due	6-Oct-2007

RESPONDENT/FACILITY INFORMATION

Respondent	Watco Tanks, Inc.		
Reg. Ent. Ref. No.	RN102519584		
Facility/Site Region	13-San Antonio	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	32368	No. of Violations	1
Docket No.	2007-0118-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Lindsey Jones
Multi-Media		EC's Team	EnforcementTeam 5
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$2,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes: No adjustment due to average performer classification.

Culpability — No — 0% Enhancement — *Subtotal 4* **$0**

Notes: Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* **$0**

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

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

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$3,088
Approx. Cost of Compliance	$6,000

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

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* **$0**

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

Notes:

Final Penalty Amount **$2,500**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$2,500**

DEFERRAL — 20% Reduction — *Adjustment* **-$500**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$2,000**

Screening Date	24-Jan-2007	**Docket No.** 2007-0118-AIR-E	**PCW**
Respondent	Watco Tanks, Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	32368		*PCW Revision December 8, 2006*
Reg. Ent. Reference No.	RN102519584		
Media [Statute]	Air Quality		
Enf. Coordinator	Lindsey Jones		

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 submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to average performer classification.

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

Screening Date	24-Jan-2007	**Docket No.** 2007-0118-AIR-E	**PCW**
Respondent	Watco Tanks, Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	32368		*PCW Revision December 8, 2006*
Reg. Ent. Reference No.	RN102519584		
Media [Statute]	Air Quality		
Enf. Coordinator	Lindsey Jones		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 122.130(a) and 122.121 and Tex. Health & Safety Code §§ 382.085(b) and 382.054

Violation Description Failed to submit an application for a Title V Federal Operating Permit ("FOP") and continued to operate without permit authorization. Specifically, the emission calculations presented in its initial New Source Review permit required the Respondent to obtain a FOP before the February 1, 1998 deadline.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1

3,279 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $3,088

Statutory Limit Test

Violation Final Penalty Total $2,500

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

Economic Benefit Worksheet

Respondent Watco Tanks, Inc.
Case ID No. 32368
Reg. Ent. Reference No. RN102519584
Media Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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	$1,000	1-Feb-1998	16-May-2008	10.3	$515	n/a	$515
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs	$5,000	1-Feb-1998	16-May-2008	10.3	$2,573	n/a	$2,573
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Permit and Record Keeping Costs are the costs associated with obtaining and maintaining a Title V Permit. Date Required is the initial deadline for obtaining a Title V Permit and the Final Date is the expected 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: $6,000

TOTAL: $3,088

Compliance History

Customer/Respondent/Owner-Operator:	CN600947055	Watco Tanks, Inc.	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN102519584	FM 539 PLANT	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	32476
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	WL0058F
	AIR NEW SOURCE PERMITS	AFS NUM	0012
Location:	5877 FM 539, Flresville, TX 78114	Rating Date: 9/1/2006	Repeat Violator: NO

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: January 26, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 23, 2002 to January 23, 2007

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

Name: Lindsey Jones Phone: 512-239-4930

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 01/10/2007 (534280)

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**
WATCO TANKS, INC.	§	
RN102519584	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0118-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 Watco Tanks, Inc. ("Watco") 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 Watco appear before the Commission and together stipulate that:

1. Watco owns and operates a metal tank painting and refinishing plant at 5877 Farm-to-Market Road 539 in Floresville, Wilson 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 Watco agree that the Commission has jurisdiction to enter this Agreed Order, and that Watco is subject to the Commission's jurisdiction.

4. Watco received notice of the violations alleged in Section II ("Allegations") on or about January 14, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Watco 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"). Watco has paid Two Thousand Dollars ($2,000) of the administrative penalty and Five Hundred

Dollars ($500) is deferred contingent upon Watco'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 Watco fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Watco 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 Watco 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 Watco 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 Plant, Watco is alleged to have failed to submit an application for a Title V Federal Operating Permit ("FOP") and continued to operate without permit authorization, in violation of 30 TEX. ADMIN. CODE §§ 122.130(a) and 122.121 and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.054, as documented during an investigation conducted from November 14 through 20, 2006. Specifically, the emission calculations presented in its initial New Source Review permit required Watco to obtain a FOP before the February 1, 1998 deadline.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Watco pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Watco'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: Watco Tanks, Inc., Docket No. 2007-0118-AIR-E" to:

   Financial Administration Division, Revenues Section
   Attention: Cashier's Office, MC 214
   Texas Commission on Environmental Quality
   P.O. Box 13088
   Austin, Texas 78711-3088

2. It is further ordered that Watco shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, submit an initial Operating Permit application as described by 30 TEX. ADMIN. CODE § 122.130(a) to the TCEQ Air Permits Division;

   b. Within 60 days after the effective date of this Agreed Order, submit a technically complete supplemental information application as described in 30 TEX. ADMIN. CODE § 122.130(b)(2) and (3) with reference to the initial application in paragraph 2.a. (if applicable);

   c. Respond completely and adequately, as determined by the Air Permits Division, to all letters requesting information concerning any Operating Permit application within 30 days of the date of such letters, or by any other deadline specified in writing;

   d. Within 345 days after the effective date of the Agreed Order, certify compliance with Commission rules regarding authorization to operate a source of air emissions under the Operating Permits program or cease operations until appropriate authorization is obtained; and

   e. The certification required by Ordering Provision 2.d. shall 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."

Submit all correspondence, reports, and documentation required by Ordering Provision 2.d. to:

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

with a copy to:

Manager, Air Section
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

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

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

6/26/07
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

3/12/2007
Date

Wally Watson
Name (Printed or typed)
Authorized Representative of
Watco Tanks, 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.