# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO:** 2005-1973-AIR-E **TCEQ ID:** RN101921138 **CASE NO.:** 27415

**RESPONDENT NAME:** University of Texas Medical Branch at Galveston

| **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:** The University of Texas Medical Branch, 301 University Boulevard, Galveston, Galveston County

**TYPE OF OPERATION:** Hospital facility with incinerator and crematory stacks

**SMALL BUSINESS:** ___ **Yes** _X_ **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 June 19, 2006. No comments were received.

**CONTACTS AND MAILING LIST:**

**SEP Coordinator:** Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223
**TCEQ Enforcement Coordinator:** Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
**Respondent:** Mr. Jack D. Tarpley, Institutional Safety Officer, University of Texas Medical Branch at Galveston, 301 University Blvd., MC-1108, Galveston, Texas 77555
**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:**<br>__ Complaint<br>_X_ Routine<br>__ Enforcement Follow-up<br>_X_ Records Review<br><br>**Date(s) of Complaints Relating to this Case:** None<br><br>**Date of Record Review Relating to this Case:** October 3, 2005<br><br>**Date of NOE Relating to this Case:** November 23, 2005 (NOE)<br><br>**Background Facts:** This was a routine scheduled record review for compliance with the air program. Two significant program violations were observed.<br><br>This item was remanded from the October 4, 2006 Commission Agenda for corrections to the SEP. The corrections have been made and it is not ready for consideration.<br><br>**AIR**<br><br>1) Failure to operate without the permitted limits for opacity and emission limits for particulate matter [30 TEX. ADMIN. CODE §§ 113.2072(a) and (b)(2) and 116.115(c), Permit No. 18655, Special Condition No. 4, and TEX. HEALTH & SAFETY CODE § 382.085(b)].<br><br>2) Failure to perform annual performance stack test no more than 12 months following the previous performance test [30 TEX. ADMIN. CODE §§ 113.2075(a)(2)(B) and 116.115(c), Permit No. 18655, Special Condition No. 11C, and TEX. HEALTH & SAFETY CODE § 382.085(b)]. | **Total Assessed:** $11,400<br><br>**Total Deferred:** $2,280<br>_X_ Expedited Settlement<br><br>__Financial Inability to Pay<br><br>**SEP Conditional Offset:** $9,120<br><br>**Total Paid (Due) to General Revenue:** $0<br><br>**Site Compliance History Classification**<br>__ **High** _X_ **Average** __ **Poor**<br><br>**Person Compliance History Classification**<br>__ **High** _X_ **Average** __ **Poor**<br><br>**Major Source:** _X_ Yes ___ No<br><br>**Applicable Penalty Policy:** September 2002 | **Corrective Actions Taken:**<br><br>1) The Executive Director recognizes that UTMB has implemented the following corrective measures at the Plant:<br><br>a) UTMB has implemented a training and maintenance schedule prior to December 7, 2005;<br><br>b) UTMB initiated and implemented an environmental management system on June 1, 2005 in order to ensure adherence to regulatory and permit requirement and specified compliance schedules including conducting visible emissions observations; and<br><br>c) UTMB conducted a stack test on April 14, 2005.<br><br>**Ordering Provisions:**<br><br>2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A). |

**Attachment A**
**Docket Number: 2005-1973-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

| | |
|---|---|
| **Respondent:** | **University of Texas Medical Branch at Galveston** |
| **Payable Penalty Amount:** | **Nine Thousand One Hundred Twenty Dollars ($11,400)** |
| **SEP Amount:** | **Nine Thousand One Hundred Twenty Dollars ($9,120)** |
| **Type of SEP:** | **Pre-approved** |
| **Third-Party Recipient:** | **Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program** |
| **Location of SEP:** | **Galveston County** |

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Galveston County. The contribution will be used in accordance with the ***Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality***. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

## 5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

## 6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

## 7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

# Penalty Calculation Worksheet (PCW)

TCEQ

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

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 28-Nov-2005 | | | | |
| PCW | 09-Dec-2005 | Screening | 29-Nov-2005 | EPA Due | 06-Jul-2006 |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | University of Texas Medical Branch at Galveston | | |
| Reg. Ent. Ref. No. | RN101921138 | | |
| Facility/Site Region | 12-Houston | Major/Minor Source | Major Source |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 27415 | No. of Violations | 2 |
| Docket No. | 2005-1973-AIR-E | Order Type | 1660 |
| Media Program(s) | Air Quality | Enf. Coordinator | J. Craig Fleming |
| Multi-Media | | EC's Team | Enforcement Team 4 |
| Admin. Penalty $ Limit Minimum | $0 | Maximum | $10,000 |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1* $10,000

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

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

**Compliance History** 24% Enhancement *Subtotals 2, 3, & 7* $2,400

Notes: The penalty was increased because the respondent received two non-similar NOVs, and one Agreed Order with denial of liability.

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

Notes: The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 10% Reduction *Subtotal 5* -$1,000

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

Notes: The respondent came into compliance on December 7, 2005 by implementing a training and maintenance schedule, an environmental management system, and conducting a stack test.

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

**Capped at the Total EB $ Amount*

| | |
|---|---|
| Total EB Amounts | $11,008 |
| Approx. Cost of Compliance | $10,250 |

**SUM OF SUBTOTALS 1-7** Final Subtotal $11,400

**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 $11,400

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty $11,400

**DEFERRAL** 20% Reduction Adjustment -$2,280

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** $9,120

**Screening Date** 29-Nov-2005 **Docket No.** 2005-1973-AIR-E **PCW**
**Respondent** University of Texas Medical Branch at Galveston *Policy Revision 2 (September 2002)*
**Case ID No.** 27415 *PCW Revision May 19, 2005*
**Reg. Ent. Reference No.** RN101921138
**Media [Statute]** Air Quality
**Enf. Coordinator** J. Craig Fleming

## 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 | 2 | 4% |
| Orders | Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)* | 1 | 20% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government *(number of judgements or consent decrees meeting criteria)* | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government *(number of counts)* | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were* | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which violations were disclosed)* | 0 | 0% |
| | | *Please Enter Yes or No* | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

***Adjustment Percentage (Subtotal 2)*** **24%**

>> **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 penalty was increased because the respondent received two non-similar NOVs, and one Agreed Order with denial of liability.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** **24%**

**Screening Date** 29-Nov-2005 **Docket No.** 2005-1973-AIR-E **PCW**

**Respondent** University of Texas Medical Branch at Galveston *Policy Revision 2 (September 2002)*

**Case ID No.** 27415 *PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN101921138

**Media [Statute]** Air Quality

**Enf. Coordinator** J. Craig Fleming

**Violation Number** 1

**Primary Rule Cite(s)** 30 Tex. Admin. Code §§ 113.2072(a) and (b)(2) and 116.115(c), and Permit No. 18655, Special Condition No. 4

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

**Violation Description** Failed to operate within the permitted limits for opacity and emission limits for particulate matter ("PM"). Specifically, the Visible Emission Observation Form recorded during the stack test conducted on April 14, 2005 indicated opacity during Run No. 2 averaged 7.7% and the permitted limit was 5.0% opacity averaged over any six minute period; and the average for PM emissions were 0.0169 grains per dry standard cubic foot ("gr/dscf") during the stack test conducted on April 14, 2005, while the statutory limit was 0.015 gr/dscf.

**Base Penalty** $10,000

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

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | x |
| Potential | | | |

OR

**Percent** 25%

>> **Programmatic Matrix**

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent**

Matrix Notes: Failure to operate within permit and emission limits resulted in the exposure of an insignificant amount of contaminants which do not exceed levels that are protective of human health and the environment.

**Adjustment** -$7,500

**Base Penalty Subtotal** $2,500

**Violation Events**

Number of Violation Events 3

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

**Violation Base Penalty** $7,500

Three quarterly events are recommended based on the stack test date of April 14, 2005 to the screening date of November 29, 2005.

**Economic Benefit (EB) for this violation**

**Estimated EB Amount** $8

**Statutory Limit Test**

**Violation Final Penalty Total** $8,550

**This violation Final Assessed Penalty (adjusted for limits)** $8,550

# Economic Benefit Worksheet

**Respondent** University of Texas Medical Branch at Galveston
**Case ID No.** 27415
**Reg. Ent. Reference No.** RN101921138
**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 | $250 | 14-Apr-2005 | 07-Dec-2005 | 0.6 | $8 | n/a | $8 |
| Remediation/Disposal | | | | 0.0 | $0 | n/a | $0 |
| Permit Costs | | | | 0.0 | $0 | n/a | $0 |
| Other (as needed) | | | | 0.0 | $0 | n/a | $0 |

Notes for DELAYED costs: Estimated expense to train personnel to operate equipment within the permit limits. The Date Required was the date of the stack test. The Final Date was the 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: NA

Approx. Cost of Compliance: $250

**TOTAL** $8

**Screening Date** 29-Nov-2005 **Docket No.** 2005-1973-AIR-E **PCW**

**Respondent** University of Texas Medical Branch at Galveston *Policy Revision 2 (September 2002)*

**Case ID No.** 27415 *PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN101921138

**Media [Statute]** Air Quality

**Enf. Coordinator** J. Craig Fleming

**Violation Number** 2

**Primary Rule Cite(s)** 30 Tex. Admin. Code §§ 113.2075(a)(2)(B) and 116.115(c), and Permit No. 18655, Special Condition No. 11C

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

**Violation Description** Failure to perform annual performance stack test no more than 12 months following the previous performance test. Specifically, Opacity, Particulate Matter ("PM"), Carbon Monoxide ("CO"), and Hydrogen Chloride ("HCL") were required to be tested by March 15, 2004.

**Base Penalty** $10,000

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

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | x | |

**Percent** 25%

>> **Programmatic Matrix**

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent**

Matrix Notes: The amount of pollutants emitted were insignificant and did not exceed levels that are harmful to human health and environmental receptors.

**Adjustment** -$7,500

**Base Penalty Subtotal** $2,500

**Violation Events**

Number of Violation Events 1

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

**Violation Base Penalty** $2,500

One single event is recommended.

**Economic Benefit (EB) for this violation**

**Estimated EB Amount** $11,000

**Statutory Limit Test**

**Violation Final Penalty Total** $2,850

**This violation Final Assessed Penalty (adjusted for limits)** $2,850

# Economic Benefit Worksheet

**Respondent** University of Texas Medical Branch at Galveston
**Case ID No.** 27415
**Reg. Ent. Reference No.** RN101921138
**Media [Statute]** Air Quality
**Violation No.** 2

| 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) | | | | 0.0 | $0 | n/a | $0 |
| Notes for DELAYED costs | NA | | | | | | |
| **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) | $10,000 | 11-Mar-2004 | 15-Apr-2005 | 2.0 | $1,000 | $10,000 | $11,000 |
| Notes for AVOIDED costs | Estimated cost of the annual stack tests. The Date Required was the first required stack test date. The Final Date was the date of compliance. | | | | | | |

Approx. Cost of Compliance $10,000

**TOTAL** $11,000

# Compliance History

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN601246887 | University of Texas Medical Branch at Galveston | Classification: AVERAGE | Rating: 5.500 |
| Regulated Entity: | RN101921138 | UTMB GALVESTON | Classification: AVERAGE | Site Rating: 8.00 |

ID Number(s):

| | | |
|---|---|---|
| MUNICIPAL SOLID WASTE PROCESSING | PERMIT | 2232A |
| PETROLEUM STORAGE TANK REGISTRATION | REGISTRATION | 30977 |
| AIR NEW SOURCE PERMITS | AFS NUM | 0078 |
| INDUSTRIAL AND HAZARDOUS WASTE GENERATION | SOLID WASTE REGISTRATION # (SWR) | 71034 |
| INDUSTRIAL AND HAZARDOUS WASTE GENERATION | EPA ID | TXD000821264 |
| IHW CORRECTIVE ACTION | SOLID WASTE REGISTRATION # (SWR) | 71034 |
| AIR OPERATING PERMITS | PERMIT | 1531 |
| AIR OPERATING PERMITS | ACCOUNT NUMBER | GB0081Q |
| AIR NEW SOURCE PERMITS | PERMIT | 56653 |
| AIR NEW SOURCE PERMITS | ACCOUNT NUMBER | GB0081Q |
| AIR NEW SOURCE PERMITS | PERMIT | 49635 |
| AIR NEW SOURCE PERMITS | PERMIT | 18655 |

Location: 301 UNIVERSITY BLVD, GALVESTON, TX, 77555 Rating Date: 9/1/05 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: November 28, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 28, 2000 to November 28, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Craig Fleming Phone: 239-5806

## 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 |

6. Comments:

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 7/5/04 ADMINORDER 2004-0124-PST-E
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.346(a)
30 TAC Chapter 334, SubChapter A 334.8(c)(4)(B)
Description: Failed to submit a UST registration and self-certification form to the TCEQ for the USTs located at 301 University Boulevard, Galveston, Galveston County.
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)
Description: Failure to make available to a common carrier a valid, current TCEQ fuel delivery certification prior to delivery of a regulated substance into the UST system located at 301 University Boulevard, Galveston, Galveston County.
Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.346(a)
30 TAC Chapter 334, SubChapter A 334.8(c)(4)(B)
Description: Failed to submit a UST registration and self-certification form to the TCEQ for the USTs located at 404 8th Street, Galveston, Galveston County.

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.)

| | | |
|---|---|---|
| 2 | 12/18/2001 | (77222) |
| 4 | 07/10/2003 | (134193) |
| 6 | 06/04/2004 | (263953) |
| 8 | 08/16/2004 | (277553) |
| 10 | 05/05/2004 | (269132) |
| 12 | 07/30/2004 | (277118) |
| 14 | 05/05/2003 | (34492) |
| 16 | 06/19/2003 | (18638) |
| 18 | 12/22/2004 | (268006) |
| 20 | 11/25/2003 | (253726) |
| 22 | 06/20/2003 | (19342) |
| 24 | 04/16/2004 | (263993) |
| 26 | 04/23/2004 | (263932) |
| 28 | 11/23/2005 | (433452) |

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

1. Date: 05/05/2003 (34492)
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 330, SubChapter Y 330.1006
Description: During the investigation it was determined that transfer activities occurred at the facility on November 2, 8, 15 and 22, 2002, and December 8, 2002, as indicated on manifests of medical waste originally transported by Gamma Waste. Additional transfer activities occurred on November 7 and 21, 2001 by EMSI.

2. Date: 03/29/2004 (261367)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter G 330.150(1)
30 TAC Chapter 330, SubChapter G 330.171(2)
Description: Failure to sign the shipping document on January 22, 2003 upon receipt of untreated medical waste.

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** |
| **UNIVERSITY OF TEXAS MEDICAL** | § | |
| **BRANCH AT GALVESTON** | § | |
| **RN101921138** | § | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2005-1973-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 University of Texas Medical Branch at Galveston ("UTMB") 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 UTMB appear before the Commission and together stipulate that:

1. UTMB owns and operates a hospital facility with incinerator and crematory stacks at 301 University Boulevard in Galveston, Galveston 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 UTMB agree that the Commission has jurisdiction to enter this Agreed Order, and that UTMB is subject to the Commission's jurisdiction.

4. UTMB received notice of the violations alleged in Section II ("Allegations") on or about November 28, 2005.

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

6. An administrative penalty in the amount of Eleven Thousand Four Hundred Dollars ($11,400) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Thousand Two Hundred Eighty Dollars ($2,280) is deferred contingent upon UTMB'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 UTMB fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require

UTMB to pay all or part of the deferred penalty. Nine Thousand One Hundred Twenty Dollars ($9,120) shall be conditionally offset by UTMB's completion of a Supplemental Environmental Project ("SEP")

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 UTMB 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 UTMB has implemented the following corrective measures at the Plant:

   a. UTMB has implemented a training and maintenance schedule prior to December 7, 2005;

   b. UTMB initiated and implemented an environmental management system on June 1, 2005 in order to ensure adherence to regulatory and permit requirement and specified compliance schedules including conducting visible emissions observations; and

   c. UTMB conducted a stack test on April 14, 2005.

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 UTMB 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, UTMB is alleged to have:

1. Failed to operate within the permitted limits for opacity and emission limits for particulate matter, in violation of 30 TEX. ADMIN. CODE §§ 113.2072(a) and (b)(2) and 116.115(c), Permit No. 18655 Special Condition No. 4, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on October 3, 2005.

2. Failed to perform annual performance stack test no more than 12 months following the previous performance test, in violation of 30 TEX. ADMIN. CODE §§ 113.2075(a)(2)(B) and 116.115(c), Permit

No. 18655 Special Condition 11C, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on October 3, 2005.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that UTMB pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and UTMB'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: University of Texas Medical Branch at Galveston, Docket No. 2005-1973-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. UTMB shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6, Jurisdiction and Stipulations above, Nine Thousand One Hundred Twenty Dollars ($9,120) of the assessed administrative penalty shall be offset with the condition that UTMB implement the SEP defined in Attachment A, incorporated herein by reference. UTMB's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

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

6/27/07
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

June 13, 2007
Date

Jack D. Tarpley
Name (Printed or typed)
Authorized Representative of
University of Texas Medical Branch at Galveston

Institutional Safety Officer
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

**Attachment A**
**Docket Number: 2005-1973-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

| | |
|---|---|
| **Respondent:** | **University of Texas Medical Branch at Galveston** |
| **Payable Penalty Amount:** | **Nine Thousand One Hundred Twenty Dollars ($11,400)** |
| **SEP Amount:** | **Nine Thousand One Hundred Twenty Dollars ($9,120)** |
| **Type of SEP:** | **Pre-approved** |
| **Third-Party Recipient:** | **Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program** |
| **Location of SEP:** | **Galveston County** |

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Galveston County. The contribution will be used in accordance with the ***Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality***. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

## 5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

## 6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

## 7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.