

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2008-1073-AIR-E **TCEQ ID:** RN101954394 **CASE NO.:** 36149**RESPONDENT NAME:** Explorer Pipeline Company

ORDER TYPE:		
<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	
CASE TYPE:		
<input checked="" 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 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>SITE WHERE VIOLATION(S) OCCURRED: Port Arthur Tank Farm, 6300 West Port Arthur Road, Port Arthur, Jefferson County</p> <p>TYPE OF OPERATION: Petroleum storage facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Daniel Siringi, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8799; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. James F. Sieck, Director, Health, Safety, Security and Environmental, Explorer Pipeline Company, 6300 West Port Arthur Road, Port Arthur, Texas 77640 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 8, 2008</p> <p>Date of NOV/NOE Relating to this Case: June 27, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>Failure to submit an annual compliance certification for the period of January 12, 2007 to January 11, 2008, within 30 days after the end of the certification period. Specifically, the certification was submitted on May 2, 2008, making it 83 days late [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), Federal Operating Permit No. O-02780, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$2,850</p> <p>Total Deferred: \$570 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,280</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on May 2, 2008, the Respondent submitted an annual compliance certification to the Beaumont Regional Office for the reporting period of January 12, 2007 to January 11, 2008, which was due on February 9, 2008. Additionally, the Respondent submitted documentation on the same date indicating that its internal tickler file has been revised and a consultant has been retained to ensure that late reporting would not reoccur.</p>

Additional ID No(s): JE0160R



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	1-Jul-2008			
	PCW	2-Jul-2008	Screening	2-Jul-2008	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	Explorer Pipeline Company		
Reg. Ent. Ref. No.	RN101954394		
Facility/Site Region	10-Beaumont	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36149	No. of Violations	1
Docket No.	2008-1073-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Daniel Siringi
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
Compliance History	39.0% Enhancement	<i>Subtotals 2, 3, & 7</i> \$975

Notes: Enhancement for one 1660 order, one NOV with same or similar violations, seven NOVs without same or similar violations, including four self-reported effluent violations in the past five years at this plant.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i> \$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i> \$625
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i> \$0
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Total EB Amounts \$17
 Approx. Cost of Compliance \$1,500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i> \$2,850
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	<i>Adjustment</i> \$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$2,850**

STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i> \$2,850
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DEFERRAL	20.0% Reduction	<i>Adjustment</i> -\$570
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,280
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Screening Date 2-Jul-2008

Docket No. 2008-1073-AIR-E

PCW

Respondent Explorer Pipeline Company

Policy Revision 2 (September 2002)

Case ID No. 36149

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101954394

Media [Statute] Air

Enf. Coordinator Daniel Siringi

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 (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	7	14%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 39%

>> **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

Enhancement for one 1660 order, one NOV with same or similar violations, seven NOVs without same or similar violations, including four self-reported effluent violations in the past five years at this plant.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 39%

Screening Date 2-Jul-2008	Docket No. 2008-1073-AIR-E	PCW			
Respondent Explorer Pipeline Company	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 36149	<small>PCW Revision June 12, 2008</small>				
Reg. Ent. Reference No. RN101954394					
Media [Statute] Air					
Enf. Coordinator Daniel Siringi					
Violation Number 1					
Rule Cite(s)	30 Tex. Admin. Code §§ 122.143(4), 122.146(2), Federal Operating Permit No. O-02780, General Terms and Conditions and Tex. Health & Safety Code § 382.085(b)				
Violation Description	Failed to submit an annual compliance certification for the period of January 12, 2007 to January 11, 2008, within 30 days after the end of the certification period. Specifically, the certification was submitted on May 2, 2008, making it 83 days late.				
Base Penalty		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				Percent <input type="text" value="0%"/>	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Percent <input type="text" value="25%"/>	
Matrix Notes	100% of the rule requirement was not met by the Respondent.				
Adjustment				\$7,500	
				\$2,500	
Violation Events					
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="83"/>			
<i>mark only one with an x</i>	daily	<input type="checkbox"/>			
	monthly	<input type="checkbox"/>			
	quarterly	<input type="checkbox"/>			
	semiannual	<input type="checkbox"/>			
	annual	<input type="checkbox"/>			
	single event	<input checked="" type="checkbox"/>			
				Violation Base Penalty <input type="text" value="\$2,500"/>	
One single event is recommended.					
Good Faith Efforts to Comply		<input type="text" value="25.0%"/> Reduction	\$625		
		Before NOV	NOV to EDRP/Settlement Offer		
Extraordinary	<input type="checkbox"/>				
Ordinary	<input checked="" type="checkbox"/>				
N/A	<input type="checkbox"/>	<small>(mark with x)</small>			
Notes	The Respondent completed all corrective actions on May 2, 2008.				
Violation Subtotal				\$1,875	
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$17"/>		Violation Final Penalty Total		\$2,850	
This violation Final Assessed Penalty (adjusted for limits)				\$2,850	

Economic Benefit Worksheet

Respondent: Explorer Pipeline Company
Case ID No.: 36149
Reg. Ent. Reference No.: RN101954394
Media: Air
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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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	9-Feb-2008	2-May-2008	0.23	\$17	n/a	\$17

Notes for DELAYED costs

Estimated cost of preparing and submitting annual compliance certification in a timely manner, revising an internal tickler file and retaining a consultant to ensure late reporting would not reoccur. The date required is the date the certification was required to be reported and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$17

Compliance History

Customer/Respondent/Owner-Operator: CN600424584 Explorer Pipeline Company Classification: AVERAGE Rating: 2.02
 Regulated Entity: RN101954394 PORT ARTHUR TANK FARM Classification: AVERAGE Site Rating: 0.60

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	36100
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JE0160R
	AIR NEW SOURCE PERMITS	AFS NUM	4824500172
	WASTEWATER	PERMIT	WQ0002399000
	WASTEWATER	PERMIT	TPDES0116891
	WASTEWATER	PERMIT	TX0116891
	ON SITE SEWAGE FACILITY	PERMIT	1230065
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31746
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD058260340
	AIR OPERATING PERMITS	ACCOUNT NUMBER	JJ0160R
	AIR OPERATING PERMITS	PERMIT	2780
	AIR OPERATING PERMITS	ACCOUNT NUMBER	JE0160R

Location: 6300 W PORT ARTHUR RD, PORT ARTHUR, TX, 77640 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: July 02, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 02, 2003 to July 02, 2008

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

Name: Daniel Siringi Phone: (409) 899-8799

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.

Effective Date: 10/25/2007

ADMINORDER 2007-0503-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(A)
 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(B)

30 TAC Chapter 101, SubChapter F 101.201(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: O-2780, General Terms and Conditions OP
 O-2780, Special Condition 2(F) OP

Description: Failure to properly report an emissions event and submit a final report no later than two weeks after the end of the emission event.

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)

30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: NSR Permit 36100, Special Condition 1 PERMIT
O-2780, General Terms and Conditions OP

O-2780, Special Condition 12A OP

Description: Failure to maintain an emission rate below the allowable emission limits and to properly

operate a floating roof storage tank.

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. (CEEDS Inv. Track. No.)

1	07/03/2003	(325867)
2	07/23/2003	(325868)
3	09/02/2003	(325869)
4	10/07/2003	(325870)
5	10/07/2003	(325871)
6	11/19/2003	(325872)
7	12/18/2003	(254439)
8	12/30/2003	(258704)
9	01/20/2004	(325873)
10	01/20/2004	(325874)
11	02/27/2004	(325862)
12	04/16/2004	(325863)
13	04/16/2004	(325865)
14	06/01/2004	(366165)
15	08/02/2004	(366166)
16	08/02/2004	(366167)
17	08/25/2004	(282907)
18	10/01/2004	(366168)
19	10/01/2004	(366169)
20	11/08/2004	(389590)
21	11/08/2004	(389591)
22	01/14/2005	(389592)
23	01/14/2005	(389593)
24	02/28/2005	(430668)
25	04/01/2005	(430669)
26	05/25/2005	(430670)
27	05/25/2005	(430671)
28	06/27/2005	(430672)
29	07/28/2005	(430673)
30	08/19/2005	(447251)
31	10/10/2005	(491695)
32	10/10/2005	(491696)
33	12/06/2005	(491697)
34	12/15/2005	(491698)
35	02/10/2006	(491694)
36	02/10/2006	(491699)
37	04/14/2006	(505894)
38	04/14/2006	(505895)
39	05/30/2006	(463020)
40	07/28/2006	(528138)
41	07/28/2006	(528139)
42	07/28/2006	(528137)
43	08/28/2006	(489955)
44	09/27/2006	(528140)
45	09/27/2006	(528141)

46 10/26/2006 (551645)
 47 11/21/2006 (551646)
 48 12/04/2006 (551647)
 49 01/03/2007 (535349)
 50 01/18/2007 (551648)
 51 01/30/2007 (532603)
 52 02/20/2007 (551644)
 53 03/09/2007 (588738)
 54 04/02/2007 (588739)
 55 05/16/2007 (588740)
 56 06/01/2007 (588741)
 57 06/20/2007 (558185)
 58 07/12/2007 (588742)
 59 08/23/2007 (605574)

60 09/17/2007 (605575)
 61 10/22/2007 (605576)
 62 11/01/2007 (630452)
 63 12/31/2007 (630453)
 64 01/25/2008 (630454)
 65 02/20/2008 (677026)
 66 04/04/2008 (677028)
 67 04/21/2008 (677027)
 68 06/23/2008 (680160)
 69 06/27/2008 (682125)

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

Date 07/31/2003 (325869)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date 11/30/2003 (325873)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date 12/18/2003 (254439)
 Self Report? NO Classification Moderate
 Rqmt Prov: PERMIT WQ-0002399
 Description: Failure to report 40% noncompliances to the TNRCC within the required notification period.
 Date 02/28/2005 (430669)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date 05/30/2006 (463020)
 Self Report? NO Classification Moderate
 Citation: 30 TAC Chapter 335, SubChapter Q 335.474
 30 TAC Chapter 335, SubChapter Q 335.479
 Description: Failure to develop and maintain the Source Reduction and Waste Minimization Plan (SRWMP) on site as required.
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 335, SubChapter A 335.10(b)
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT B 262.20(a)
 Description: Failure to properly complete manifest #3620917 as required.
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(1)
 Description: Failure to maintain complete hazardous waste determination records for waste streams, 0019489H, and FCVL205H.

Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(A)
30 TAC Chapter 335, SubChapter E 335.112(a)(8)
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(1)(ii)
40 CFR Chapter 265, SubChapter I, PT 265, SubPT B 265.17(a)
Description: Failure to post "No Smoking " signs in areas of ignition hazard at both container storage areas (NOR #02 & 24).

Date 08/29/2006 (489955)

Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 319, SubChapter A 319.1
Rqmt Prov: PERMIT 2399 OT, No 5, pg 12
Description: Failure by Explorer Pipeline to submit the results of total aluminum testing in accordance with the Other Requirements section of the permit.

Date 01/31/2007 (551644)

Self Report? YES Classification Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date 06/21/2007 (558185)

Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.146(2)
5C THC Chapter 382, SubChapter D 382.085(b)
Rqmt Prov: OP O-02780 General Terms and Conditions
Description: Failure to submit an Annual Compliance Certification (ACC) in a timely manner.

Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.145(2)(C)
5C THC Chapter 382, SubChapter D 382.085(b)
Rqmt Prov: OP O-02780 General Terms and Conditions
Description: Failure to submit a semiannual deviation report in a timely manner.

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
ENFORCEMENT ACTION
CONCERNING
EXPLORER PIPELINE COMPANY
RN101954394**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1073-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 Explorer Pipeline Company ("the Respondent") 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 the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a petroleum storage facility at 6300 West Port Arthur Road in Port Arthur, Jefferson 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 the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 2, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Eight Hundred Fifty Dollars (\$2,850) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Two Hundred Eighty Dollars (\$2,280) of the administrative penalty and Five Hundred Seventy Dollars (\$570) is deferred contingent upon the Respondent'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 the Respondent fails to timely and satisfactorily comply with all requirements of this

Agreed Order, the Executive Director may require the Respondent 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 the Respondent 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 May 2, 2008, the Respondent submitted an annual compliance certification to the Beaumont Regional Office for the reporting period of January 12, 2007 to January 11, 2008, which was due on February 9, 2008. Additionally, the Respondent submitted documentation on the same date indicating that its internal tickler file has been revised and a consultant has been retained to ensure that late reporting would not reoccur.
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 the Respondent 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, the Respondent is alleged to have failed to submit an annual compliance certification for the period of January 12, 2007 to January 11, 2008, within 30 days after the end of the certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4), 122.146(2), Federal Operating Permit No. O-02780, General Terms and Conditions and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on May 8, 2008. Specifically, the certification was submitted on May 2, 2008, making it 83 days late.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: Explorer Pipeline Company, Docket No. 2008-1073-AIR-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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 the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Explorer Pipeline Company
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

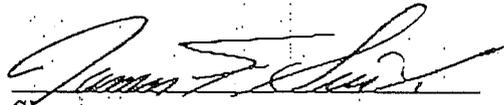
Date 10/10/2008

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 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date 8/14/08

JAMES F. SIECK
Name (Printed or typed)
Authorized Representative of
Explorer Pipeline Company

DIRECTOR HEALTH SAFETY
Title SECURITY AND ENVIRONMENTAL

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.

