

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0645-AIR-E **TCEQ ID:** RN100873108 **CASE NO.:** 35755

RESPONDENT NAME: Arrow Marble L.L.C.

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: Arrow Marble L.L.C., 5855 Cunningham Road, Houston, Harris County</p> <p>TYPE OF OPERATION: Cultured marble products manufacturing plant</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input 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 October 13, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. James Stewart, Operations Manager, Arrow Marble L.L.C., 5855 Cunningham Road, Houston, Texas 77041 Mr. Joseph J. Kinsella, Manager, Arrow Marble L.L.C., 5855 Cunningham Road, Houston, Texas 77041 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 type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: December 31, 2007</p> <p>Date of NOV/NOE Relating to this Case: April 4, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>AIR</p> <p>1) Failure to submit semi-annual deviation reports no later than 30 days after the end of each reporting period and submit an accurate and complete annual compliance certification ("ACC") Title V report. Specifically, the first and second semi-annual deviation reports for the August 13, 2006 to August 13, 2007 reporting period were both received on December 31, 2007. The first semi-annual report, due by March 15, 2007, was 291 days late and the second semi-annual report, due by September 12, 2007, was 110 days late. Also, the ACC Title V report submitted on December 31, 2007 for the reporting period August 13, 2006 through August 13, 2007 is missing the following information: the pollutants (styrene and methylmethacrylate ("MMA")); the monitoring requirements citation and frequency; the date and time each deviation started and ended; the number of deviations and cause; and corrective actions taken to remedy or mitigate the deviation situations [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A) & (C), Federal Operating Permit ("FOP") No. O-02631, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to comply with the Maximum Allowable Emission Rate Table ("MAERT") for styrene and MMA contained in Air Permit No. 47669.</p>	<p>Total Assessed: \$20,250</p> <p>Total Deferred: \$4,050 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$450 (remaining \$15,750 due in 35 monthly payments of \$450 each)</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input 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>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Develop and begin implementing procedures to ensure timely submittal of accurate and complete deviation reports; and</p> <p>ii. Submit corrected Title V deviation reports and ACC for the period August 13, 2006 through August 13, 2007.</p> <p>b. Within 60 days after the effective date of this Agreed Order, demonstrate compliance with all maximum allowable emission rates for styrene and MMA emissions, in accordance with the MAERT limits of Air Permit No. 47669; and</p> <p>c. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

<p>Specifically, the revised yearly contaminant summary reports submitted June 17, 2008 show that styrene emission rates exceeded the 15.4 tons per year ("tpy") limit by 1.46 tpy for the 2005 reporting period and 3.63 tpy for 2006. Also, the 2.44 tpy MMA limit was exceeded by 6.21 tpy for 2005 and by 6.97 tpy for 2006. These exceedances occurred at the Gel Coat Application Booth, the Resin Layup Booth and Fiberglass Application Booth [30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F) and 122.143(4), Air Permit No. 47669, General Condition No. 8., FOP No. O-02631, Special Condition No. 7., and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		
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Additional ID No(s): Federal Operating Permit No. O-02631



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 8, 2008

DATES	Assigned	7-Apr-2008	Screening	17-Apr-2008	EPA Due	
	PCW	11-Jul-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Arrow Marble L.L.C.
Reg. Ent. Ref. No.	RN100873108
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	35755	No. of Violations	2	
Docket No.	2008-0645-AIR-E	Order Type	1660	
Media Program(s)	Air	Enf. Coordinator	Thomas Jecha	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10% Enhancement Subtotals 2, 3, & 7

Notes: Reduction recommended for high performer classification, one Notice of Intent, and one Disclosure of Violations.

Culpability No Enhancement Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>
Ordinary	<input type="text"/>
N/A	X (mark with x)

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

Total EB Amounts \$854 Subtotal 6
 Approx. Cost of Compliance \$4,500 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Reduction Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Screening Date 17-Apr-2008

Docket No. 2008-0645-AIR-E

PCW

Respondent Arrow Marble L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 35755

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN100873108

Media [Statute] Air

Enf. Coordinator Thomas Jecha

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 judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	1	-2%

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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Reduction recommended for high performer classification, one Notice of Intent, and one Disclosure of Violations.

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

Screening Date 17-Apr-2008

Docket No. 2008-0645-AIR-E

PCW

Respondent Arrow Marble L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 35755

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN100873108

Media [Statute] Air

Enf. Coordinator Thomas Jecha

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(A) & (C), Federal Operating Permit ("FOP") No. O-02631, General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit semi-annual deviation reports no later than 30 days after the end of each reporting period and submit an accurate and complete annual compliance certification ("ACC") Title V report. Specifically, the first and second semi-annual deviation reports for the August 13, 2006 to August 13, 2007 reporting period were both received on December 31, 2007. The first semi-annual report, due by March 15, 2007, was 291 days late and the second semi-annual report, due by September 12, 2007, was 110 days late. Also, the ACC Title V report submitted on December 31, 2007 for the reporting period August 13, 2006 through August 13, 2007 is missing the following information: the pollutants (styrene and MMA); the monitoring requirements citation and frequency; the date and time each deviation started and ended; the number of deviations and cause; and corrective actions taken to remedy or mitigate the deviation situations.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="25%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Arrow Marble L.L.C.
Case ID No. 35755
Reg. Ent. Reference No. RN100873108
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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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	15-Mar-2007	11-Nov-2008	1.7	\$42	n/a	\$42
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

Estimated cost to timely submit the semi-annual reports and properly complete and resubmit the ACC report. The date required is the date the first semi-annual report was due to the TCEQ. 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

\$500

TOTAL

\$42

Screening Date 17-Apr-2008

Docket No. 2008-0645-AIR-E

PCW

Respondent Arrow Marble L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 35755

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN100873108

Media [Statute] Air

Enf. Coordinator Thomas Jecha

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 116.115(b)(2)(F) and 122.143(4), Air Permit No. 47669, General Condition No. 8., and FOP No. O-02631, Special Condition No. 7., Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to comply with the Maximum Allowable Emission Rate Table for styrene and methylmethacrylate ("MMA") in NSR Permit No. 47669. Specifically, the revised yearly contaminant summary reports submitted June 17, 2008 show that styrene emission rates exceeded the 15.4 tons per year ("tpy") limit by 1.46 tpy for the 2005 reporting period and 3.63 tpy for 2006. Also, the 2.44 tpy MMA limit was exceeded by 6.21 tpy for 2005 and by 6.97 tpy for 2006. These exceedances occurred at the Gel Coat Application Booth, the Resin Layup Booth and Fiberglass Application Booth.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input checked="" type="checkbox"/>
	single event	<input type="text"/>

Violation Base Penalty

Six annual events are recommended (two events per unit).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Arrow Marble L.L.C.
Case ID No. 35755
Reg. Ent. Reference No. RN100873108
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$2,500	13-Aug-2005	11-Nov-2008	3.2	\$27	\$542	\$569
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	\$1,500	13-Aug-2005	11-Nov-2008	3.2	\$244	n/a	\$244
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 cost for engineering controls and employee training. The date required is the date the first deviation reporting period began and the final date is the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$4,000

TOTAL \$812

Compliance History

Customer/Respondent/Owner-Operator:	CN600549299 Arrow Marble L.L.C.	Classification: HIGH	Rating: 0.00																								
Regulated Entity:	RN100873108 ARROW MARBLE LLC	Classification: HIGH	Site Rating: 0.00																								
ID Number(s):	<table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">AIR NEW SOURCE PERMITS</td> <td style="width: 20%;">PERMIT</td> <td style="width: 30%;">47669</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>HX2813G</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>AFS NUM</td> <td>4820101568</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>ACCOUNT NUMBER</td> <td>HX2813G</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>PERMIT</td> <td>2631</td> </tr> <tr> <td>STORMWATER</td> <td>PERMIT</td> <td>TXR05R097</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>EPA ID</td> <td>TXR000059196</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>SOLID WASTE REGISTRATION # (SWR)</td> <td>87495</td> </tr> </table>			AIR NEW SOURCE PERMITS	PERMIT	47669	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HX2813G	AIR NEW SOURCE PERMITS	AFS NUM	4820101568	AIR OPERATING PERMITS	ACCOUNT NUMBER	HX2813G	AIR OPERATING PERMITS	PERMIT	2631	STORMWATER	PERMIT	TXR05R097	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXR000059196	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	87495
AIR NEW SOURCE PERMITS	PERMIT	47669																									
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AIR OPERATING PERMITS	ACCOUNT NUMBER	HX2813G																									
AIR OPERATING PERMITS	PERMIT	2631																									
STORMWATER	PERMIT	TXR05R097																									
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXR000059196																									
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	87495																									
Location:	5855 CUNNINGHAM RD, HOUSTON, TX, 77041	Rating Date: 9/1/2007 Repeat Violator: NO																									
TCEQ Region:	REGION 12 - HOUSTON																										
Date Compliance History Prepa	April 10, 2008																										
Agency Decision Requiring Compliance	Enforcement																										
Compliance Period:	April 10, 2003 to April 10, 2008																										
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History																											
Name:	<u>Thomas Jecha</u>	Phone:	<u>512 239 2576</u>																								

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 06/14/2005 (396020)
 - 2 03/16/2007 (532473)
 - 3 04/04/2008 (610659)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.
 - Disclosure Date: 10/22/2004
 - Viol. Classification: Moderate
 - Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)
 - 30 TAC Chapter 116, SubChapter B 116.116
 - Rqmt Prov: PERMIT P 2
 - Description: Failure to comply with Permit No. 47559, Provision No. 2, requiring no visible emissions from the exhaust stacks or structures at the site.

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)

30 TAC Chapter 116, SubChapter B 116.116

Rqmt PERMIT P 6 and 8

Prov:

Description: Failure to comply with Permit No. 47669, Provisions No. 6 and 8, requiring maintaining the plant under negative pressure during all manufacturing operations.

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)

30 TAC Chapter 116, SubChapter B 116.116

Rqmt PERMIT P 7

Prov:

Description: Failure to comply with Permit No. 47669, Provision No. 7, requiring monthly maintenance inspections on all filtering and ventilation systems to be recorded.

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)

30 TAC Chapter 116, SubChapter B 116.116

Rqmt PERMIT P 10

Prov:

Description: Failure to comply with Permit No. 47669, Provision No. 10, requiring records of monthly material uses levels and hours of operation, the data recorded to be reduced to writing and a report produced monthly.

Viol. Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Description: Failure to prepare and submit a No Exposure Certification report to the Agency.

Viol. Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter Q 335.474

Description: Failure to prepare and implement a source reduction and waste minimization plan.

Viol. Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter C 335.62

Description: Failure to classify and code all waste streams generated on-site.

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)

30 TAC Chapter 116, SubChapter B 116.116

Rqmt PERMIT MAERT

Prov:

Description: Failure to limit emissions to the minimum allowable rates specified in the Maximum Allowable Emission Rates Table (MAERT) in Permit 47669.

Viol. Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.120(a)

30 TAC Chapter 122, SubChapter B 122.130(b)(1)

Description: Failure to limit the potential to emit and failure to submit a federal operating permit.

Viol. Classification: Minor

Citation: 40 CFR Chapter 370, SubChapter J, PT 370, SubPT B 370.25(a)

Description: Failure to submit a Toxic Chemical Release Inventory Form to the Executive Director.

Notice of Intent Date: 4/28/06 (465923)

No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ARROW MARBLE L.L.C.
RN100873108

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0645-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 Arrow Marble L.L.C. ("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 cultured marble products manufacturing plant at 5855 Cunningham Road in Houston, Harris 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 April 9, 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 Twenty Thousand Two Hundred Fifty Dollars (\$20,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Hundred Fifty Dollars (\$450) of the

administrative penalty and Four Thousand Fifty Dollars (\$4,050) 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.

The remaining amount of Fifteen Thousand Seven Hundred Fifty Dollars (\$15,750) of the administrative penalty shall be payable in 35 monthly payments of Four Hundred Fifty Dollars (\$450) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 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.
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, the Respondent is alleged to have:

1. Failed to submit semi-annual deviation reports no later than 30 days after the end of each reporting period and submit an accurate and complete annual compliance certification ("ACC") Title V report, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A) & (C), Federal Operating Permit ("FOP") No. O-02631, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on December 31, 2007. Specifically, the first and second semi-annual deviation reports for the August 13, 2006 to August 13, 2007 reporting period were both received on December 31, 2007. The first semi-annual report, due by March 15, 2007, was 291 days late and the second semi-

annual report, due by September 12, 2007, was 110 days late. Also, the ACC Title V report submitted on December 31, 2007 for the reporting period August 13, 2006 through August 13, 2007 is missing the following information: the pollutants (styrene and methylmethacrylate ("MMA")); the monitoring requirements citation and frequency; the date and time each deviation started and ended; the number of deviations and cause; and corrective actions taken to remedy or mitigate the deviation situations.

2. Failed to comply with the Maximum Allowable Emission Rate Table ("MAERT") for styrene and MMA contained in Air Permit No. 47669, in violation of 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F) and 122.143(4), Air Permit No. 47669, General Condition No. 8., FOP No. O-02631, Special Condition No. 7. and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on December 31, 2007. Specifically, the revised yearly contaminant summary reports submitted June 17, 2008 show that styrene emission rates exceeded the 15.4 tons per year ("tpy") limit by 1.46 tpy for the 2005 reporting period and 3.63 tpy for 2006. Also, the 2.44 tpy MMA limit was exceeded by 6.21 tpy for 2005 and by 6.97 tpy for 2006. These exceedances occurred at the Gel Coat Application Booth, the Resin Layup Booth and Fiberglass Application Booth.

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: Arrow Marble L.L.C., Docket No. 2008-0645-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 the Respondent shall undertake the following technical requirements:
 - a. Within 30 days or the effective date of this Agreed Order:
 - i. Develop and begin implementing procedures to ensure timely submittal of accurate and complete deviation reports; and

- ii. Submit corrected Title V deviation reports and ACC for the period August 13, 2006 through August 13, 2007;
- b. Within 60 days after the effective date of this Agreed Order, demonstrate compliance with all maximum allowable emission rates for styrene and MMA emissions, in accordance with the MAERT limits of Air Permit No. 47669; and
- c. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification 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 fines and imprisonment for knowing violations."

The certification shall be submitted 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:

Air Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

- 3. 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.
- 4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 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.
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 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Srdin
For the Executive Director

9/26/2008
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 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.

Joseph J. Kinsella
Signature

7/31/08
Date

JOSEPH J. KINSELLA
Name (Printed or typed)
Authorized Representative of
Arrow Marble L.L.C.

MANAGER
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.

