

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2008-1172-AIR-E **TCEQ ID:** RN101061844 **CASE NO.:** 36240  
**RESPONDENT NAME:** Viking Pools, LLC

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Viking Pools Central, 10600 West Interstate Highway 20 East, Midland, Midland County</p> <p><b>TYPE OF OPERATION:</b> Swimming pool manufacturing plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 24, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Miriam Hall, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-1044; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Eric Metheny, Safety and Environmental Manager, Viking Pools, LLC, P.O. Box 550, Jane Lew, West Virginia 26378  Mr. Jeff Dryja, Vice President of Operations, Viking Pools, LLC, P.O. Box 550, Jane Lew, West Virginia 26378  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 28 through June 24, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 26, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>1) Failure to maintain volatile organic compound ("VOC") emissions at or below the maximum allowable emission rates ("MAER") for Stack 1. Specifically, during 2007, the Respondent exceeded the hourly reactive VOC MAER of 14.96 pounds per hour ("lbs/hr") for 214 days and exceeded the hourly non-reactive VOC (acetone) rate of 2.21 lbs/hr for 173 days. During the same period, the Respondent also exceeded the annual reactive VOC MAER of 23.93 tons per year ("tpy") by 14.47 tons and the non-reactive VOC rate of 1.66 tpy by 8.14 tons [30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 122.143(4), New Source Review Permit No. 36078 General Condition No. 8, Federal Operating Permit O-02438 Special Terms and Conditions No. 4, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to submit a timely annual permit compliance certification ("PCC"). Specifically, the PCC for the period January 1, 2006 through December 31, 2006 was due on January 30, 2007; however, it was not submitted until July 3, 2007 [30 TEX. ADMIN. CODE § 122.146(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$15,750</p> <p><b>Total Deferred:</b> \$3,150  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$12,600</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. On July 3, 2007, submitted the PCC for the period January 1, 2006 through December 31, 2006; and</p> <p>b. On April 16, 2008, amended New Source Review Permit No. 36078 to increase VOC MAER for Stack 1.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

<b>DATES</b>	<b>Assigned</b>	1-Jul-2008			
	<b>PCW</b>	21-Jul-2008	<b>Screening</b>	17-Jul-2008	<b>EPA Due</b> 23-Mar-2009

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Viking Pools, LLC		
<b>Reg. Ent. Ref. No.</b>	RN101061844		
<b>Facility/Site Region</b>	7-Midland	<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	36240	<b>No. of Violations</b>	2
<b>Docket No.</b>	2008-1172-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Miriam Hall
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$17,500
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
<b>Compliance History</b>	15.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b> \$2,625

Notes: The penalty was enhanced for one NOV with same or similar violations and one 1660 order. The penalty was reduced for High Performer Classification.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$4,375
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$318	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$5,100		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$15,750
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$15,750

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$15,750
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$3,150
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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.

<b>PAYABLE PENALTY</b>	\$12,600
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Screening Date 17-Jul-2008

Docket No. 2008-1172-AIR-E

PCW

Respondent Viking Pools, LLC

Policy Revision 2 (September 2002)

Case ID No. 36240

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101061844

Media [Statute] Air

Enf. Coordinator Miriam Hall

**Compliance History Worksheet**

## &gt;&gt; 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)	1	5%
	Other written NOVs	0	0%
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 submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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)** 25%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

## &gt;&gt; Compliance History Summary

Compliance History Notes

The penalty was enhanced for one NOV with same or similar violations and one 1660 order. The penalty was reduced for High Performer Classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 15%

<b>Screening Date</b> 17-Jul-2008	<b>Docket No.</b> 2008-1172-AIR-E	<b>PCW</b>		
<b>Respondent</b> Viking Pools, LLC		<small>Policy Revision 2 (September 2002)</small>		
<b>Case ID No.</b> 36240		<small>PCW Revision June 12, 2008</small>		
<b>Reg. Ent. Reference No.</b> RN101061844				
<b>Media [Statute]</b> Air				
<b>Enf. Coordinator</b> Miriam Hall				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 116.115(b)(2)(F), 122.143(4), New Source Review Permit No. 36078 General Condition No. 8, Federal Operating Permit O-02438 Special Terms and Conditions No. 4, and Tex. Health & Safety Code § 382.085(b)			
<b>Violation Description</b>	Failed to maintain volatile organic compound ("VOC") emissions at or below the maximum allowable emission rates ("MAER") for Stack 1. Specifically, during 2007, the Respondent exceeded the hourly reactive VOC MAER of 14.96 pounds per hour ("lbs/hr") for 214 days and exceeded the hourly non-reactive VOC (acetone) rate of 2.21 lbs/hr for 173 days. During the same period, the Respondent also exceeded the annual reactive VOC MAER of 23.93 tons per year ("tpy") by 14.47 tons and the non-reactive VOC rate of 1.66 tpy by 8.14 tons.			
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Release</b>	<b>Harm</b>		
		Major      Moderate      Minor		
	Actual	<input type="text"/>	<input type="text" value="X"/>	
	Potential	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	Major      Moderate      Minor		
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment has been exposed to an insignificant amount of pollutants as a result of this violation. On April 16, 2008, MAER rates were increased to rates higher than actual 2007 Reactive VOC hourly and yearly emission rates, to Non-Reactive VOC rates higher than the actual 2007 yearly emissions, and to an hourly rate higher than actual emissions on all but 20 days in 2007.			
	<b>Adjustment</b>	<input type="text" value="\$7,500"/>		
		<input type="text" value="\$2,500"/>		
<b>Violation Events</b>				
	<b>Number of Violation Events</b> <input type="text" value="6"/>	<input type="text" value="461"/>	<b>Number of violation days</b>	
<small>mark only one with an x</small>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text" value="X"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
			<b>Violation Base Penalty</b> <input type="text" value="\$15,000"/>	
Six quarterly events are recommended from the first date an hourly violation was documented, January 11, 2007 to the date the permit was amended, April 16, 2008.				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$3,750"/>	
	Extraordinary	<input type="text"/>		
	Ordinary	<input type="text" value="X"/>		
	N/A	<input type="text"/>		
	Notes	The NOE was issued on June 26, 2008.		
		<b>Violation Subtotal</b>	<input type="text" value="\$11,250"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
	<b>Estimated EB Amount</b> <input type="text" value="\$316"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$13,500"/>	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$13,500"/>		

## Economic Benefit Worksheet

**Respondent** Viking Pools, LLC  
**Case ID No.** 36240  
**Reg. Ent. Reference No.** RN101061844  
**Media** Air  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### 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	\$5,000	11-Jan-2007	16-Apr-2008	1.26	\$316	n/a	\$316
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of obtaining a permit, including the \$900 permit fee, from the date of the first documented hourly emission violation to the compliance date (date permit amendment issued).

### 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

\$5,000

**TOTAL**

\$316

<p><b>Screening Date</b> 17-Jul-2008</p> <p><b>Respondent</b> Viking Pools, LLC</p> <p><b>Case ID No.</b> 36240</p> <p><b>Reg. Ent. Reference No.</b> RN101061844</p> <p><b>Media [Statute]</b> Air</p> <p><b>Enf. Coordinator</b> Miriam Hall</p> <p><b>Violation Number</b> 2</p> <p><b>Rule Cite(s)</b> 30 Tex. Admin. Code § 122.146(2) and Tex. Health &amp; Safety Code § 382.085(b)</p> <p><b>Violation Description</b> Failed to submit a timely annual permit compliance certification ("PCC"). Specifically, the PCC for the period January 1, 2006 through December 31, 2006 was due on January 30, 2007; however it was not submitted until July 3, 2007.</p>	<p><b>Docket No.</b> 2008-1172-AIR-E</p> <p style="text-align: right;"><b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 12, 2008</i></p>																							
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OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <td colspan="3" style="text-align: center;"><b>Harm</b></td> <td></td> </tr> <tr> <td></td> <td>Release</td> <td>Major</td> <td>Moderate</td> <td>Minor</td> <td></td> </tr> <tr> <td></td> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"><b>Percent</b> 0%</td> </tr> <tr> <td></td> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>			<b>Harm</b>					Release	Major	Moderate	Minor			Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> 0%		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
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		x	<input type="text"/>	<input type="text"/>	<b>Percent</b> 25%																			
		<input type="text"/>	<input type="text"/>	<input type="text"/>																				
<b>Matrix Notes</b>	The Respondent failed to comply with 100% of the rule requirement.																							
<b>Adjustment</b> \$7,500																								
<b>\$2,500</b>																								
<b>Violation Events</b>																								
	<p>Number of Violation Events <input type="text" value="1"/>      <input type="text" value="154"/> Number of violation days</p> <p> <i>mark only one with an x</i> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table> </p> <p style="text-align: right;"><b>Violation Base Penalty</b> \$2,500</p>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x											
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single event	x																							
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	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDRP/Settlement Offer</td> </tr> <tr> <td>Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Ordinary</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> </tr> <tr> <td>N/A</td> <td colspan="2" style="text-align: center;">(mark with x)</td> </tr> </table> <p><b>Notes</b> The NOE was issued June 26, 2008.</p>		Before NOV	NOV to EDRP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	x	<input type="text"/>	N/A	(mark with x)												
	Before NOV	NOV to EDRP/Settlement Offer																						
Extraordinary	<input type="text"/>	<input type="text"/>																						
Ordinary	x	<input type="text"/>																						
N/A	(mark with x)																							
<b>Violation Subtotal</b> \$1,875																								
<b>Economic Benefit (EB) for this violation</b> <b>Statutory Limit Test</b>																								
Estimated EB Amount <input type="text" value="\$2"/>	Violation Final Penalty Total <input type="text" value="\$2,250"/>																							
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,250"/>																								

## Economic Benefit Worksheet

**Respondent** Viking Pools, LLC  
**Case ID No.** 36240  
**Reg. Ent. Reference No.** RN101061844  
**Media** Air  
**Violation No.** 2

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	30-Jan-2007	3-Jul-2007	0.42	\$2	n/a	\$2

Notes for DELAYED costs

The estimated cost for submitting the PCC from the due date to compliance date.

### 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				0.00	\$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

\$100

TOTAL

\$2

# Compliance History

Customer/Respondent/Owner-Operator:	CN603192840 VIKING POOLS, LLC	Classification: HIGH	Rating: 0.00																		
Regulated Entity:	RN101061844 VIKING POOLS CENTRAL	Classification: HIGH	Site Rating: 0.00																		
ID Number(s):	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">AIR OPERATING PERMITS</td> <td style="width: 25%;">ACCOUNT NUMBER</td> <td style="width: 25%;">ML0342B</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>PERMIT</td> <td>2438</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>36078</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>ML0342B</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>AFS NUM</td> <td>4832900059</td> </tr> <tr> <td>STORMWATER</td> <td>PERMIT</td> <td>TXR05V332</td> </tr> </table>			AIR OPERATING PERMITS	ACCOUNT NUMBER	ML0342B	AIR OPERATING PERMITS	PERMIT	2438	AIR NEW SOURCE PERMITS	PERMIT	36078	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	ML0342B	AIR NEW SOURCE PERMITS	AFS NUM	4832900059	STORMWATER	PERMIT	TXR05V332
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AIR NEW SOURCE PERMITS	AFS NUM	4832900059																			
STORMWATER	PERMIT	TXR05V332																			
Location:	10600 W IH 20 E, MIDLAND, TX, 79711	Rating Date: September 01 07 Repeat Violator: NO																			
TCEQ Region:	REGION 07 - MIDLAND																				
Date Compliance History Prepared:	July 15, 2008																				
Agency Decision Requiring Compliance History:	Enforcement																				
Compliance Period:	July 15, 2003 to July 15, 2008																				

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

Name: Miriam Hall Phone: (512) 239-1044

### 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?    | Yes                               |
| 3. If Yes, who is the current owner?   | <u>VIKING POOLS, LLC</u>          |
| 4. If Yes, who was/were the prior owner(s)?  | <u>Viking Pools Central, Inc.</u> |
| 5. When did the change(s) in ownership occur?  | <u>12/22/2005</u>                 |

### 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: 02/08/2008   | ADMINORDER 2007-1130-AIR-E |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)<br>5C THC Chapter 382, SubChapter D 382.085(b)   |                            |
| Rqmt Prov: Requirement #8 - Do not exceed MAERT PERMIT   |                            |
| Description: Failed to comply with the permitted emission limits   |                            |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)<br>30 TAC Chapter 122, SubChapter B 122.143(4)<br>40 CFR Chapter 63, SubChapter C, PT 63, SubPT WWWW 63.5910(b)(1)<br>5C THC Chapter 382, SubChapter D 382.085(b) |                            |
| Rqmt Prov: General Terms and Conditions OP   |                            |
| Description: Failed to submit the SACR for the April 21 through June 30, 2006 compliance period no later than July 31, 2006  |                            |
- 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 | 05/30/2007 | (559095) |
| 2 | 10/11/2007 | (597510) |
| 3 | 01/25/2008 | (615253) |
| 4 | 06/26/2008 | (684304) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |       |            |          |
|-------|------------|----------|
| Date: | 06/26/2008 | (684304) |
|-------|------------|----------|

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.116(b) 5C THSC Chapter 382 382.085(b)		
Description:	Failed to obtain a permit amendment		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THSC Chapter 382 382.085(b)		
Description:	Weight content of styrene in the gray gelcoat exceeded 34% styrene		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THSC Chapter 382 382.085(b)		
Description:	The RE failed to determine daily average acetone emission rates		

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  
VIKING POOLS, LLC  
RN101061844**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2008-1172-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 Viking Pools, LLC ("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 swimming pool manufacturing plant at 10600 West Interstate Highway 20 East in Midland, Midland 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 1, 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 Fifteen Thousand Seven Hundred Fifty Dollars (\$15,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twelve Thousand Six Hundred Dollars (\$12,600) of the administrative penalty and Three Thousand One Hundred Fifty Dollars (\$3,150) 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 the Respondent has implemented the following corrective measures at the Plant:
  - a. On July 3, 2007, submitted the permit compliance certification ("PCC") for the period January 1, 2006 through December 31, 2006; and
  - b. On April 16, 2008, amended New Source Review Permit No. 36078 to increase volatile organic compound ("VOC") maximum allowable emission rates ("MAER") for Stack 1.
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:

1. Failed to maintain VOC emissions at or below the MAER for Stack 1, in violation of 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 122.143(4), New Source Review Permit No. 36078 General Condition No. 8, Federal Operating Permit O-02438 Special Terms and Conditions No. 4, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted May 28 through June 24, 2008. Specifically, during 2007, the Respondent exceeded the hourly reactive VOC MAER of 14.96 pounds per hour ("lbs/hr") for 214 days and exceeded the hourly non-reactive VOC (acetone) rate of 2.21 lbs/hr for 173 days. During the same period, the Respondent also exceeded the annual reactive VOC MAER of 23.93 tons per year ("tpy") by 14.47 tons and the non-reactive VOC rate of 1.66 tpy by 8.14 tons.



2. Failed to submit a timely annual PCC, in violation of 30 TEX. ADMIN. CODE § 122.146(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted May 28 through June 24, 2008. Specifically, the PPC for the period January 1, 2006 through December 31, 2006 was due on January 30, 2007; however, it was not submitted until July 3, 2007.

### 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: Viking Pools, LLC, Docket No. 2008-1172-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.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Sredler  
For the Executive Director

11/3/2008  
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.

Jeff Dryja  
Signature

8/27/08  
Date

Jeff Dryja  
Name (Printed or typed)  
Authorized Representative of  
Viking Pools, LLC

V.P. of Operations  
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.

