

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1478-AIR-E **TCEQ ID:** RN101527943 **CASE NO.:** 34599

RESPONDENT NAME: Wharton County Power Partners, L.P.

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: Newgulf Power Facility, Farm-to-Market Road 1301, approximately three miles south of Boling, Wharton County</p> <p>TYPE OF OPERATION: Fossil fuel electric power generator 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 January 21, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lindsey Jones, Enforcement Division, Enforcement Team 4, (512) 239-4930, MC 149; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Robert H. Warburton, Jr., Director, Denham Capitol Management, L.P., 25B Vreeland Road, Suite 305, Florham Park, New Jersey 07932 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: August 27, 2007</p> <p>Date of NOV/NOE Relating to this Case: August 30, 2007 (NOE)</p> <p>Background Facts: This was a routine records review. Two violations were documented.</p> <p>AIR</p> <p>1) Failure to submit the permit compliance certification no later than 30 days after the end of the certification period. Specifically, the permit compliance certification for the June 29, 2006 through June 28, 2007 period was due no later than July 28, 2007 but was not received by the TCEQ until August 6, 2007 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2); Federal Operating Permit No. O-00086, General Terms and Conditions; and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to report all instances of deviations in writing to the Executive Director for each six-month period after the issuance of a permit no later than 30 days after the end of each reporting period. Specifically, the semi-annual deviation reports for the December 29, 2005 through June 28, 2006; June 29, 2006 through December 28, 2006; and December 29, 2006 through June 28, 2007 compliance periods were not submitted until August 6, 2007 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C); Federal Operating Permit No. O-00086, General Terms and Conditions; and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$11,000</p> <p>Total Deferred: \$2,200 <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: \$8,800</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 the Respondent has submitted the permit compliance certification for the June 29, 2006 through June 28, 2007 period and semi-annual deviation reports for the December 29, 2005 through June 28, 2007 compliance periods on August 6, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	4-Sep-2007	Screening	11-Sep-2007	EPA Due	
	PCW	11-Sep-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Wharton County Power Partners, L.P.		
Reg. Ent. Ref. No.	RN101527943		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	34599	No. of Violations	2	
Docket No.	2007-1478-AIR-E	Order Type	1660	
Media Program(s)	Air	Enf. Coordinator	Lindsey Jones	
Multi-Media		EC's Team	EnforcementTeam 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	35% Enhancement	Subtotals 2, 3, & 7	\$3,500
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Notes: The penalty was enhanced due to five previous dissimilar NOVs, one previous similar NOV, and one previous 1660-style order.

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

Good Faith Effort to Comply	25% Reduction	Subtotal 5	\$2,500
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes: The Respondent returned to compliance on August 6, 2007.

Total EB Amounts	\$39	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$1,000	<i>*Capped at the Total EB \$ Amount</i>		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$11,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,000
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DEFERRAL	20% Reduction	Adjustment	-\$2,200
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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	\$8,800
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Screening Date 11-Sep-2007

Docket No. 2007-1478-AIR-E

PCW

Respondent Wharton County Power Partners, L.P.

Policy Revision 2 (September 2002)

Case ID No. 34599

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101527943

Media [Statute] Air

Enf. Coordinator Lindsey Jones

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	5	10%
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%

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) 35%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty was enhanced due to five previous dissimilar NOVs, one previous similar NOV, and one previous 1660-style order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 11-Sep-2007	Docket No. 2007-1478-AIR-E	PCW
Respondent Wharton County Power Partners, L.P.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34599	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN101527943		
Media [Statute] Air		
Enf. Coordinator Lindsey Jones		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code §§ 122.143(4) and 122.146(2); Federal Operating Permit No. O-00086, General Terms and Conditions; and Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failed to submit the permit compliance certification no later than 30 days after the end of the certification period. Specifically, the permit compliance certification for the June 29, 2006 through June 28, 2007 period was due no later than July 28, 2007 but was not received by the TCEQ until August 6, 2007.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification				
		Major	Moderate		Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>		<input type="text"/>
				Percent <input type="text" value="25%"/>	
Matrix Notes	100% of the rule requirement was not met.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	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

One single event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$2,750"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,750"/>	

Economic Benefit Worksheet

Respondent Wharton County Power Partners, L.P.
Case ID No. 34599
Reg. Ent. Reference No. RN101527943
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
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	\$250	28-Jul-2007	6-Aug-2007	0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for timely preparation and submittal of permit compliance certification. Date required is the due date for the certification. Final date is the date the certification was received.

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

\$250

TOTAL

\$0

PCW

Screening Date 11-Sep-2007

Docket No. 2007-1478-AIR-E

Policy Revision 2 (September 2002)

Respondent Wharton County Power Partners, L.P.

PCW Revision June 26, 2007

Case ID No. 34599

Reg. Ent. Reference No. RN101527943

Media [Statute] Air

Enf. Coordinator Lindsey Jones

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(C); Federal Operating Permit No. O00086, General Terms and Conditions; and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to report all instances of deviations in writing to the Executive Director for each six month period after the issuance of a permit no later than 30 days after the end of each reporting period. Specifically, the semi-annual deviation reports for the December 29, 2005 through June 28, 2006; June 29, 2006 through December 28, 2006; and December 29, 2006 through June 28, 2007 compliance periods were not submitted until August 6, 2007.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

100% of the rule requirement was not met.

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

Three single events are recommended.

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 Wharton County Power Partners, L.P.
Case ID No. 34599
Reg. Ent. Reference No. RN101527943
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

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	\$750	28-Jul-2006	6-Aug-2007	1.0	\$38	n/a	\$38
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 for timely preparation and submittal of semi-annual deviation reports. Date required is the due date for the first semi-annual deviation report. Final date is the date the reports were received.

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

\$750

TOTAL

\$38

Compliance History

Customer/Respondent/Owner-Operator: CN601673148 Wharton County Power Partners, L.P. Classification: AVERAGE Rating: 1.06
 Regulated Entity: RN101527943 NEWGULF POWER FACILITY Classification: AVERAGE Site Rating: 1.06

ID Number(s):	AIR OPERATING PERMITS AIR OPERATING PERMITS WASTEWATER WASTEWATER AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS STORMWATER STORMWATER	ACCOUNT NUMBER PERMIT PERMIT PERMIT ACCOUNT NUMBER AFS NUM PERMIT PERMIT PERMIT	WF0175P 86 WQ0003891000 TPDES0115134 WF0175P 4848100049 9340 TXR05R522 TXR05Q603
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Location: FM 1301, 3 mi south of Boling, TX Rating Date: 9/1/2007 Repeat Violator: NO
 TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: September 11, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: September 11, 2002 to September 11, 2007
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Lindsey Jones Phone: 512-239-4930

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Wharton County Power Partners, L.P.
4. If Yes, who was/were the prior owner(s)? Newgulf Pwr Venture, Inc. & CSW Services Intl, Inc.
5. When did the change(s) in ownership occur? 05/05/2003

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: 03/19/2007 ADMINORDER 2006-1779-AIR-E
 Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
 5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to submit an annual compliance certification within 30 days after the end of the January 5, 2005 to January 5, 2006 certification period.

- 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 | 10/18/2002 | (229413) |
| 2 | 12/17/2002 | (229420) |
| 3 | 12/17/2002 | (229417) |
| 4 | 12/17/2002 | (229414) |
| 5 | 01/07/2003 | (229423) |
| 6 | 02/06/2003 | (229387) |
| 7 | 03/24/2003 | (325288) |
| 8 | 04/29/2003 | (229394) |
| 9 | 04/30/2003 | (12384) |
| 10 | 05/05/2003 | (229398) |

11	06/06/2003	(325290)	36	08/19/2005	(447123)
12	07/07/2003	(325292)	37	10/18/2005	(491340)
13	10/01/2003	(325293)	38	11/10/2005	(491341)
14	11/12/2003	(325294)	39	12/13/2005	(491342)
15	01/08/2004	(325295)	40	12/28/2005	(491343)
16	02/20/2004	(251054)	41	01/20/2006	(491345)
17	03/15/2004	(325289)	42	03/07/2006	(491338)
18	05/03/2004	(365799)	43	03/23/2006	(491339)
19	06/17/2004	(325291)	44	05/04/2006	(505742)
20	08/03/2004	(365800)	45	05/26/2006	(505743)
21	08/30/2004	(365801)	46	06/30/2006	(505744)
22	08/30/2004	(365802)	47	08/01/2006	(528000)
23	10/01/2004	(365803)	48	08/21/2006	(528001)
24	10/25/2004	(365804)	49	08/28/2006	(457484)
25	11/29/2004	(389376)	50	09/25/2006	(528002)
26	12/06/2004	(389377)	51	10/20/2006	(551558)
27	01/31/2005	(389378)	52	11/15/2006	(515060)
28	02/11/2005	(430649)	53	11/27/2006	(551559)
29	03/28/2005	(389375)	54	12/27/2006	(551560)
30	04/18/2005	(377451)	55	01/08/2007	(588582)
31	04/25/2005	(430650)	56	02/27/2007	(588578)
32	05/16/2005	(430651)	57	03/23/2007	(588579)
33	06/06/2005	(347641)	58	04/16/2007	(588580)
34	07/22/2005	(430652)	59	05/25/2007	(588581)
35	07/22/2005	(430653)	60	08/30/2007	(573389)

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

Date 05/10/2005 (347641)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(B)
30 TAC Chapter 122, SubChapter B 122.145(2)(C)
Description: Failure to submit a deviation report within the required time frame. Sub Category is A,11,i,7
Self Report? NO Classification: Moderate
Citation: 40 CFR Chapter 60, SubChapter C, PT 60, SubPT GG 60.334[G]
Description: Failure to comply with the requirements as found in 40 CFR Part 60.334 (h) (1).

Date 07/31/2005 (447123)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date 10/31/2005 (491342)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date 06/30/2006 (528000)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date 07/31/2006 (528001)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date 04/30/2007 (588581)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

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
WHARTON COUNTY POWER
PARTNERS, L.P.
RN101527943**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1478-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 Wharton County Power Partners, L.P. ("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 fossil fuel electric power generator plant on Farm-to-Market Road 1301, approximately three miles south of Boling, in Wharton 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 September 4, 2007.
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 Eleven Thousand Dollars (\$11,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Thousand Eight Hundred Dollars (\$8,800) of the administrative penalty and Two

Thousand Two Hundred Dollars (\$2,200) 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 submitted the permit compliance certification for the June 29, 2006 through June 28, 2007 period and semi-annual deviation reports for the December 29, 2005 through June 28, 2007 compliance periods on August 6, 2007.
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 submit the permit compliance certification no later than 30 days after the end of the certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2); Federal Operating Permit No. O-00086, General Terms and Conditions; and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on August 27, 2007. Specifically, the permit compliance certification for the June 29, 2006 through June 28, 2007 period was due no later than July 28, 2007, but was not received by the TCEQ until August 6, 2007.
2. Failed to report all instances of deviations in writing to the Executive Director for each six-month period after the issuance of a permit no later than 30 days after the end of each reporting period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C); Federal Operating Permit No. O-00086, General Terms and Conditions; and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on August 27, 2007. Specifically, the semi-annual deviation reports for the December 29, 2005 through June 28, 2006; June 29, 2006 through December 28, 2006; and December 29, 2006 through June 28, 2007 compliance periods were not submitted until August 6, 2007.

III. DENIALS

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

IV. ORDERING PROVISIONS

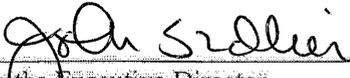
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations 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: Wharton County Power Partners, L.P., Docket No. 2007-1478-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


For the Executive Director

12/28/2007
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.


Signature

6 Nov. 2007
Date

Robert H. Warburton Jr.
Name (Printed or typed)
Authorized Representative of
Wharton County Power Partners, L.P.

Director
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.

