

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1765-IHW-E **TCEQ ID:** RN100930965 **CASE NO.:** 31402
RESPONDENT NAME: W. Silver, Inc.

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 type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" 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: W. Silver, 9059 Doniphan Drive, Vinton, El Paso County</p> <p>TYPE OF OPERATION: A manufacturing facility</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 14, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Colin Barth, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0086; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Mark Fenenbock, President, P.O. Box 12904, El Paso, Texas 79913 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 28, 2006</p> <p>Date of NOV/NOE Relating to this Case: August 30, 2006 (NOE)</p> <p>Background Facts: This was a routine records review. Two violations were documented.</p> <p>WASTE</p> <p>1) Failed to properly complete manifests for 46,500 pounds of Class 1 Industrial Waste (Texas Waste Code 00163011). Specifically, the Respondent submitted four waste manifests, but they did not contain Texas Waste Code 00163011 [30 TEX. ADMIN. CODE § 335.10(a)(1)].</p> <p>2) Failed to update the Notice of Registration ("NOR"). Specifically, the NOR did not include the correct primary contact [30 TEX. ADMIN. CODE § 335.6(c)].</p>	<p>Total Assessed: \$3,696</p> <p>Total Deferred: \$739 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,957</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 type="checkbox"/> Yes <input checked="" 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. Immediately after the effective date of this Agreed Order, begin to properly complete manifests for all waste shipped off-site;</p> <p>b. Within 15 days after the effective date of this Agreed Order, submit revised manifests to include Texas Waste Code 00163011, for the 46,500 pounds of Class 1 Industrial Waste that was shipped on February 24, 2005, September 13, 2005, and December 28, 2005;</p> <p>c. Within 30 days after the effective date of this Agreed Order, submit a NOR with the correct primary contact, to the TCEQ; and</p> <p>d. Within 45 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. through b.</p>



Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

DATES	Assigned	04-Sept-2006	Screening	03-Oct-2006	EPA Due	
	PCW	04-Oct-2006				

RESPONDENT/FACILITY INFORMATION	
Respondent	W. Silver, Inc.
Reg. Ent. Ref. No.	RN100930965
Facility/Site Region	6-EI Paso <input type="button" value="<"/> Major/Minor Source <input type="button" value="<"/> Minor Source

CASE INFORMATION			
Enf./Case ID No.	31402	No. of Violations	2
Docket No.	2006-1765-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste <input type="button" value="<"/>	Enf. Coordinator	Colin Barth
Multi-Media		EC's Team	Enforcement Team 8 <input type="button" value="<"/>
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 **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	<i>(mark with a small x)</i>

Notes

Economic Benefit **Subtotal 6**

Total EB Amounts	\$24	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$700	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 03-Oct-2006 **Docket No.** 2006-1765-IHW-E **PCW**
Respondent W. Silver, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 31402 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN100930965
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Colin Barth

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOV's meeting criteria</i>)	1	5%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments, and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) **76%**

>> **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 respondent has one NOV for same or similar violations, three NOV's for dissimilar violations, two 1660 Orders and one Findings Order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **76%**

Screening Date 03-Oct-2006

Docket No. 2006-1765-IHW-E

PCW

Respondent W. Silver, Inc.

Policy Revision 2 (September 2002)

Case ID No. 31402

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100930965

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Colin Barth

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failed to properly complete manifests for 46,500 pounds of Class 1 Industrial Waste (Texas Waste Code 00163011), as documented during a record review investigation conducted on August 28, 2006. Specifically, the respondent submitted four waste manifests, but they did not contain Texas Waste Code 00163011.

Base Penalty

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

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

Percent

Matrix Notes

Between 30% and 70% of the rule requirement was not met.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input checked="" type="checkbox"/>

Violation Base Penalty

Four single events are recommended based on the number of manifest forms received from the respondent.

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 W. Silver, Inc.
 Case ID No. 31402
 Reg. Ent. Reference No. RN100930965
 Media [Statute] Industrial and Hazardous Waste
 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
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	28-Aug-2006	23-Apr-2007	0.7	\$16	n/a	\$16
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 properly manifest 46,500 pounds of soil contaminated with waste oil, from the investigation date to the estimated 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 **TOTAL**

Screening Date 03-Oct-2006

Docket No. 2006-1765-IHW-E

PCW

Respondent W. Silver, Inc.

Policy Revision 2 (September 2002)

Case ID No. 31402

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100930965

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Colin Barth

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 335.6(c)

Secondary Rule Cite(s)

Violation Description
Failed to update the Notice of Registration (NOR), as documented during a record review investigation conducted on August 28, 2006. Specifically, the NOR did not include the correct primary contact.

Base Penalty \$10,000

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

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

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
				X	Percent <input type="text" value="1%"/>

Matrix Notes Less than 30% of the rule requirement was not met.

Adjustment -\$9,900

Base Penalty Subtotal \$100

Violation Events

Number of Violation Events 1

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

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$176

This violation Final Assessed Penalty (adjusted for limits) \$176

Economic Benefit Worksheet

Respondent W. Silver, Inc.
 Case ID No. 31402
 Reg. Ent. Reference No. RN100930965
 Media [Statute] Industrial and Hazardous Waste
 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
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$200	28-Aug-2006	23-May-2007	0.7	\$7	n/a	\$7

Notes for DELAYED costs: Estimated cost to submit a current NOR, from the investigation date to the the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 **\$200** TOTAL **\$7**

Compliance History

Customer/Respondent/Owner-Operator: CN600601496 W. Silver, Inc. Classification: AVERAGE Rating: 41.14
 Regulated Entity: RN100930965 W SILVER Classification: AVERAGE Site Rating: 41.14

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	2245
	AIR NEW SOURCE PERMITS	PERMIT	2813
	AIR NEW SOURCE PERMITS	PERMIT	7916
	AIR NEW SOURCE PERMITS	PERMIT	20021
	AIR NEW SOURCE PERMITS	PERMIT	43917
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE00910
	AIR NEW SOURCE PERMITS	AFS NUM	0030
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD980809487
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	20498
	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION	REGISTRATION	0710096
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	72793
	WATER LICENSING	LICENSE	0710096
	STORMWATER	PERMIT	TXR05M657
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	20498

Location: 9059 DONIPHAN DR, VINTON, TX, 79821 Rating Date: 9/1/2006 Repeat Violator: NO
 TCEQ Region: REGION 06 - EL PASO
 Date Compliance History Prepared: October 23, 2006
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: October 23, 2001 to October 23, 2006

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

Name: Colin Barth Phone: 512 239 0086

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? | <u>N/A</u> |
| 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 Effective Date: 05/09/2003 ADMINORDER 2002-1080-AIR-E
 Classification: Major

Citation: 30 TAC Chapter 122, SubChapter B 122.121
 5C THC Chapter 382, SubChapter A 382.054

Description: Alleged to have exceeded the hazardous air pollutant emission limits without obtaining a Title V permit for its rolling mill plant's coating operation.

Effective Date: 02/24/2002 ADMINORDER 1999-1584-MLM-E

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)
 4G THC Chapter 321, SubChapter D 341.033[G]

Description: Failure to have the public water system under the direct supervision of a certified water works operator at all times.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(2)(A)
 4G THC Chapter 321, SubChapter D 341.033(d)

Description: Failure to collect and submit the appropriate number of water samples for bacteriological analysis for the months of June, August, October and November 2000.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(g)(4)

Description: Failure to provide public notification of the failure to sample for the months of June, August, October, and November 2000.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.62
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11[G]

Description: Failure to conduct a hazardous waste determination for a 55-gallon drum partially full of waste grease, and a 55-gallon gray drum of alkaline cleaning compound.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.4[G]
TWC Chapter 26 26.121

Description: Failure to prevent the unauthorized discharge of diesel fuel, lubricating oil and grease, and oily water in various places in the Plant.

Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.1
30 TAC Chapter 335, SubChapter C 335.69(d)(2)

40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(c)(1)(I)
40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173(a)
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)

Description: Failure to properly close and label 55-gallon containers of waste oil and grease, 55-gallon containers of punctured aerosol paint cans, and an oil-water separator tank.

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)

Description: Failure to update its Notice of Registration (NOR) with current information regarding one waste stream, one waste management unit, and the facility contact.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter Q 335.474[G]
Description: Failure to develop, submit and maintain a waste minimization and source reduction plan.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.9(a)(2)[G]
Description: Failure to submit annual waste summary reports for 1996 and 1997.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.10(b)[G]
Description: Failure to properly complete 28 manifests for waste grease, used refractory brick, and dry paint chips.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.10(d)(3)
Description: Failure to retain the generator copy of 24 manifests for waste grease, used refractory brick, and dry paint chips.

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.10(a)[G]
Description: Failure to use the correct manifest form for two shipments of waste.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.10(a)[G]
Description: Failure to document that all shipments of Class I Industrial waste were properly manifested.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter B 335.43(c)[G]
40 CFR Chapter 266, SubChapter I, PT 266, SubPT O 268.7(a)

Description: Failure to provide notice of land disposal restrictions on Safety-Kleen Solvent (NOR Waste No. 0001203H).

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter F 334.127(a)(1)[G]
Description: Failure to register two 16,000-gallon above-ground diesel storage tanks.

Classification: Moderate

Citation: 30 TAC Chapter 114, SubChapter D 114.100(a)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to comply with the 2.7% by weight oxygenate content requirement for gasoline during the control period between October 1, 2000, and March 31, 2001 for El Paso County.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.252(2)
5C THC Chapter 382, SubChapter A 382.085(a)

Description: Failed to comply with the 7.0 psia, Maximum Reid Vapor Pressure requirement.
Classification: Minor

Citation: 30 TAC Chapter 114, SubChapter D 114.100(a)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 2000-1273-AIR-E, IV.1. ORDER

Description: Failed to comply with the minimum 2.7% by weight, oxygenated fuel requirement for motor vehicle fuel within El Paso County during the control period between October 1, 2004 and March 31, 2005.

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 08/29/2003 (149524)
N/A

2 08/30/2006 (510558)
3 09/19/2005 (432094)
4 06/20/2005 (396814)
5 08/22/2006 (461479)
6 03/14/2006 (453668)
7 06/23/2004 (276860)
8 12/13/2005 (440117)
9 11/11/2004 (340253)
10 03/22/2006 (460071)
11 06/30/2003 (29998)
12 03/25/2002 (100898)
13 01/02/2002 (100897)
14 08/26/2002 (1933)
15 11/05/2001 (100896)
16 06/27/2006 (484264)
17 10/23/2003 (252838)
18 03/22/2003 (17201)
19 12/05/2005 (439221)
20 04/15/2002 (286190)
21 12/27/2005 (437723)
22 12/23/2004 (299020)
23 01/12/2004 (259698)
24 08/13/2002 (3219)
25 06/19/2006 (453774)
26 08/21/2003 (150631)
27 07/28/2003 (146773)
28 12/09/2002 (18856)

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

N/A

Date: 12/12/2005 (440117)

Self Report? NO

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121[G]

Description: Failure to construct and implement a storm water pollution prevention plan.

Date: 07/01/2003 (29998)

Self Report? NO

Classification: Moderate

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

Description: Failure to comply with Special Condition No. 5 of Permit No. 7916. No visible emissions shall leave the plant property.

Date: 03/14/2006 (453668)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.10(b)[G]

Description: Failure to properly complete and sign waste manifests.

Self Report? NO

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.266(a)
30 TAC Chapter 327 327.5[G]
30 TAC Chapter 335, SubChapter C 335.69(a)(4)(A)
30 TAC Chapter 335, SubChapter C 335.69(a)(4)(B)
30 TAC Chapter 335, SubChapter C 335.69(a)(4)(C)
30 TAC Chapter 335, SubChapter C 335.69(a)(4)[G]
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(4)

Description: Failure to take appropriate action taken when a release into the environment occurs.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.10(a)(1)

Description: Failure to document that all shipments of Class I industrial waste were properly manifested. Soil contaminated with waste oil was not being manifested.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)

Description: Failure to update notice of registration (NOR).

Date: 07/25/2003 (146773)

Self Report? NO Classification: Moderate

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

Description: Failure to comply with Special Condition No. 5 of Permit No. 7916. No visible emissions shall leave the plant property.

F. Environmental audits.

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
W. SILVER, INC.
RN100930965

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2006-1765-IHW-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 W. Silver, Inc. ("W. Silver") under the authority of the TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and W. Silver appear before the Commission and together stipulate that:

1. W. Silver owns and operates a manufacturing facility at 9059 Doniphan Drive in Vinton, El Paso County, Texas (the "Facility").
2. The Facility involves the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and W. Silver agree that the Commission has jurisdiction to enter this Agreed Order, and that W. Silver is subject to the Commission's jurisdiction.
4. W. Silver received notice of the violations alleged in Section II ("Allegations") on or about September 4, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by W. Silver of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Six Hundred Ninety-Six Dollars (\$3,696) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). W. Silver has paid Two Thousand Nine Hundred Fifty-Seven Dollars (\$2,957) of the administrative penalty and Seven Hundred Thirty-Nine Dollars (\$739) is deferred contingent upon W. Silver'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 W.

Silver fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require W. Silver 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 W. Silver 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 W. Silver 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 Facility, W. Silver is alleged to have:

1. Failed to properly complete manifests for 46,500 pounds of Class 1 Industrial Waste (Texas Waste Code 00163011), in violation of 30 TEX. ADMIN. CODE § 335.10(a)(1), as documented during a record review investigation conducted on August 28, 2006. Specifically, W. Silver submitted four waste manifests, but they did not contain Texas Waste Code 00163011.
2. Failed to update the Notice of Registration ("NOR"), in violation of 30 TEX. ADMIN. CODE § 335.6(c), as documented during a record review investigation conducted on August 28, 2006. Specifically, the NOR did not include the correct primary contact.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that W. Silver pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and W. Silver'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: W. Silver, Inc., Docket No. 2006-1765-IHW-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 W. Silver shall undertake the following technical requirements:
 - a. Immediately after the effective date of this Agreed Order, begin to properly complete manifests for all waste shipped off-site, in accordance with 30 TEX. ADMIN. CODE § 335.10(a)(1);
 - b. Within 15 days after the effective date of this Agreed Order, submit revised manifests to include Texas Waste Code 00163011, for the 46,500 pounds of Class 1 Industrial Waste that was shipped on February 24, 2005, September 13, 2005, and December 28, 2005, in accordance with 30 TEX. ADMIN. CODE § 335.10(a)(1);
 - c. Within 30 days after the effective date of this Agreed Order, submit a Notification of Registration with the correct primary contact, to the TCEQ, in accordance with 30 TEX. ADMIN. CODE § 335.6(c); and
 - d. Within 45 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. through 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 fine 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:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue., Suite 560
El Paso, Texas 79602-7833

3. The provisions of this Agreed Order shall apply to and be binding upon W. Silver. W. Silver is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If W. Silver 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, W. Silver's failure to comply is not a violation of this Agreed Order. W. Silver shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. W. Silver shall notify the Executive Director within seven days after W. Silver 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 W. Silver shall be made in writing to the Executive Director. Extensions are not effective until W. Silver 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 W. Silver 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.

W. Silver, Inc.

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8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to W. Silver, or three days after the date on which the Commission mails notice of the Order to W. Silver, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

Date 1/11/08

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

[Signature]
Signature

October 28, 2007
Date

MARK Fenebock
Name (Printed or typed)
Authorized Representative of
W. Silver, Inc.

President
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.

