

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1002-AIR-E **TCEQ ID:** RN104958509 **CASE NO.:** 33908

RESPONDENT NAME: Dallas Fort Worth Rail Terminal LLC

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: Dallas Fort Worth Rail Terminal, 1401 Cold Springs Road, Fort Worth, Tarrant County</p> <p>TYPE OF OPERATION: Ethanol transloading site which unloads ethanol from railcars to tank trucks</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 November 26, 2007. 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, MC 149, (512) 239-4930; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Charles Christy, Plant Manager, Dallas Fort Worth Rail Terminal LLC, 1401 Cold Springs Road, Fort Worth, Texas 76102 Mr. Stuart Berg, Manager-Business Development, Dallas Fort Worth Rail Terminal LLC, 1401 Cold Springs Road, Fort Worth, Texas 76102 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 checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 26, 2007</p> <p>Date of NOV/NOE Relating to this Case: May 21, 2007 (NOE)</p> <p>Background Facts: This was a follow-up investigation. One violation was documented.</p> <p>AIR</p> <p>Failed to obtain permit authorization prior to the construction or modification of a facility which may emit air contaminants. Specifically, the ethanol transloading site did not meet the distance requirements for a permit by rule and failed to seek permit authorization prior to the use of the site [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p>Total Assessed: \$2,100</p> <p>Total Deferred: \$420 <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: \$1,680</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>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondent has ceased using those sections of Track nos. 17 and 18 that are within 100 feet of receptors by July 2, 2007.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application or demonstrate that the Site can satisfy the conditions for a permit by rule;</p> <p>b. If a permit application is submitted, then respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification that authorization to construct and operate a source of air emissions has been obtained, the conditions for a permit by rule have been satisfied, or that construction/operation has ceased until such time that appropriate authorization is obtained; and</p> <p>d. Submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.c.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

DATES	Assigned PCW	29-May-2007	Screening	22-Jun-2007	EPA Due	
		26-Jun-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Dallas Fort Worth Rail Terminal LLC		
Reg. Ent. Ref. No.	RN104958509		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33908	No. of Violations	1
Docket No.	2007-1002-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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Reduction **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	<input checked="" type="checkbox"/>	(mark with x)

Notes

Total EB Amounts **0% Enhancement*** **Subtotal 6**
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

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 Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 22-Jun-2007

Docket No. 2007-1002-AIR-E

PCW

Respondent Dallas Fort Worth Rail Terminal LLC

Policy Revision 2 (September 2002)

Case ID No. 33908

PCW Revision, May 25, 2007

Reg. Ent. Reference No. RN104958509

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of 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) 5%

>> 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 one prior similar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 22-Jun-2007	Docket No. 2007-1002-AIR-E	PCW
Respondent Dallas Fort Worth Rail Terminal LLC	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 33908	<i>PCW Revision May 25, 2007</i>	
Reg. Ent. Reference No. RN104958509		
Media [Statute] Air		
Enf. Coordinator Lindsey Jones		
Violation Number	1	
Rule Cite(s)	30 Tex. Admin Code § 116.110(a) and Tex. Health and Safety Code §§ 382.0518(a) and 382.085(b)	
Violation Description	Failed to obtain permit authorization prior to the construction or modification of a facility which may emit air contaminants. Specifically, the ethanol transloading site did not meet the distance requirements for a permit by rule and failed to seek permit authorization prior to the use of the site.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification			
	Major	Moderate	Minor	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.			

Adjustment	\$9,000	\$1,000
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Violation Events

Number of Violation Events	2	Number of violation days	57
<i>mark only one with an x</i>	daily		Violation Base Penalty <input type="text" value="\$2,000"/>
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
Two monthly events are recommended from the investigation date (April 26, 2007) to the date of screening (June 22, 2007).			

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$41"/>	Violation Final Penalty Total <input type="text" value="\$2,100"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,100"/>	

Economic Benefit Worksheet

Respondent Dallas Fort Worth Rail Terminal LLC
Case ID No. 33908
Reg. Ent. Reference No. RN104958509
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	8-Nov-2006	30-Jun-2008	1.6	\$41	n/a	\$41
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 obtain a permit for ethanol transloading operations. Date required is the date of the original investigation. Final date is 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

\$500

TOTAL

\$41

Compliance History

Customer/Respondent/Owner-Operator: CN603083494 Dallas Fort Worth Rail Terminal LLC Classification: AVERAGE BY DEFAULT Rating: 3.01

Regulated Entity: RN104958509 DALLAS FORT WORTH RAIL TERMINAL Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 79511

Location: 1401 COLD SPRINGS RD, FORT WORTH, TX, 76102 Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 26, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 22, 2002 to June 22, 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? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 01/03/2007 | (531315) |
| 2 | 05/21/2007 | (559630) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | |
|--------------|--|--------------------------|
| Date: | 12/26/2006 | (531315) |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.212(a)(3)(E)
5C THC Chapter 382, SubChapter A 382.085(b) | |
| Description: | Failure to establish a vapor tight seal when loading VOC through the hatch of a transport vessel. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.214(a)(1)(B)
5C THC Chapter 382, SubChapter A 382.085(b) | |
| Description: | Failure to immediately discontinue VOC loading/unloading when a leak was observed. | |
| Self Report? | NO | Classification: Major |
| Citation: | 30 TAC Chapter 116, SubChapter B 116.110(a)
5C THC Chapter 382, SubChapter A 382.0518(a)
5C THC Chapter 382, SubChapter D 382.085(b) | |
| Description: | Failure to obtain proper authorization for operations at the facility. | |
- 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
DALLAS FORT WORTH RAIL
TERMINAL LLC
RN104958509

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§
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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1002-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 Dallas Fort Worth Rail Terminal LLC ("DFW Rail") 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 DFW Rail appear before the Commission and together stipulate that:

1. DFW Rail operates an ethanol transloading site which unloads ethanol from railcars to tank trucks at 1401 Cold Springs Road in Fort Worth, Tarrant County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and DFW Rail agree that the Commission has jurisdiction to enter this Agreed Order, and that DFW Rail is subject to the Commission's jurisdiction.
4. DFW Rail received notice of the violations alleged in Section II ("Allegations") on or about May 26, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by DFW Rail of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand One Hundred Dollars (\$2,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). DFW Rail has paid One Thousand Six Hundred Eighty Dollars (\$1,680) of the administrative

penalty and Four Hundred Twenty Dollars (\$420) is deferred contingent upon DFW Rail'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 DFW Rail fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require DFW Rail 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 DFW Rail 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 DFW Rail has ceased using those sections of Track nos. 17 and 18 that are within 100 feet of receptors by July 2, 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 DFW Rail 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 operator of the Site, DFW Rail is alleged to have failed to obtain permit authorization prior to the construction or modification of a facility which may emit air contaminants, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on April 26, 2007. Specifically, the ethanol transloading site did not meet the distance requirements for a permit by rule and failed to seek permit authorization prior to the use of the site.

III. DENIALS

DFW Rail generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that DFW Rail pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and DFW Rail'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: Dallas Fort Worth Rail Terminal LLC, Docket No. 2007-1002-AIR-E" to:

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

2. It is further ordered that DFW Rail shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application or demonstrate that the Site can satisfy the conditions for a permit by rule, in accordance with 30 TEX. ADMIN. CODE § 116.110(a) to:

Air Permits Division, MC 162
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - b. If a permit application is submitted, then respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
 - c. Within 180 days after the effective date of this Agreed Order, submit written certification that authorization to construct and operate a source of air emissions has been obtained, the conditions for a permit by rule have been satisfied, or that construction/operation has ceased until such time that appropriate authorization is obtained; and
 - d. Submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.c. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

Air Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon DFW Rail. DFW Rail is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If DFW Rail 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, DFW Rail's failure to comply is not a violation of this Agreed Order. DFW Rail shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. DFW Rail shall notify the Executive Director within seven days after DFW Rail 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 DFW Rail shall be made in writing to the Executive Director. Extensions are not effective until DFW Rail 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 DFW Rail in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to DFW Rail, or three days after the date on which the Commission mails notice of the Order to DFW Rail, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Dallas Fort Worth Rail Terminal LLC
DOCKET NO. 2007-1002-AIR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sedler
For the Executive Director

12/03/2007
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.

Stuart Berg
Signature

August 29, 2007
Date

Stuart Berg
Name (Printed or typed)
Authorized Representative of
Dallas Fort Worth Rail Terminal LLC

Manager - Business Development
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.

