EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1570-AIR-E **TCEQ ID:** RN100642040 **CASE NO.:** 34701

RESPONDENT NAME: Barney M. Davis, LP

ORDER TYPE:		
_X_1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
_X_AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Barney M. Davis Power Station, 4301 Waldron Road, Corpus Christi, Nueces County

TYPE OF OPERATION: Electricity generation plant

SMALL BUSINESS: ___ **Yes** _X_ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 24, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Audra L. Ruble, Enforcement Division, Enforcement Team 4, MC R-14, (361) 825-3126; Mr. Brian Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Gary Eddins, Plant Manager, Barney M. Davis, LP, 4301 Waldron Road, Corpus Christi, Texas 78418
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint ___ Routine ___ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** July 19, 2007 **Date of NOV/NOE Relating to this Case:** August 23, 2007 (NOE) **Background Facts:** This was a routine record review. **AIR** 1) Failed to prevent an excess opacity event that occurred from the Unit 2 Boiler on May 4, 2007. Specifically, an opacity of 68% was reported during the 30 minute event. Opacity is limited to 20% averaged over a six-minute period. Since the opacity event was not reported timely, it does not meet the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222(d) [30 TEX. ADMIN. CODE §§ 111.111(a)(1)(B) and 116.115(c); Air Permit No. 1177, Special Condition No. 4; and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failed to report an excess opacity event within 24 hours. Specifically, the May 4, 2007 event was not reported until May 7, 2007 [30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $2,470 **Total Deferred:** $494 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $1,976 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent submitted documentation on July 31, 2007 detailing administrative and physical procedures that have been implemented, including an alarm system, training program, and data review process designed to ensure that emission events are identified and reported in a timely fashion.

Additional ID No(s).: NE0024E

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision September 19, 2007*

DATES					
Assigned	28-Aug-2007				
PCW	27-Sep-2007	Screening	27-Sep-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Barney M. Davis, LP		
Reg. Ent. Ref. No.	RN100642040		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	34701	No. of Violations	2
Docket No.	2007-1570-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Audra L. Ruble
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* $2,600

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 20% Enhancement — *Subtotals 2, 3, & 7* $520

Notes: The Respondent has received three same or similar NOVs, three non-similar NOVs, and has submitted one NOA in the past five years.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 25% Reduction — *Subtotal 5* $650

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes: The Respondent submitted corrective action documentation on July 31, 2007.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$18
Approx. Cost of Compliance	$1,500

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $2,470

OTHER FACTORS AS JUSTICE MAY REQUIRE — 0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $2,470

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $2,470

DEFERRAL — 20% Reduction — *Adjustment* -$494

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $1,976

Screening Date 27-Sep-2007 **Docket No.** 2007-1570-AIR-E **PCW**

Respondent Barney M. Davis, LP

Policy Revision 2 (September 2002)

Case ID No. 34701

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN100642040

Media [Statute] Air

Enf. Coordinator Audra L. Ruble

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*)	3	15%
	Other written NOVs	3	6%
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*)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	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) 20%

>> **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 received three same or similar NOVs, three non-similar NOVs, and has submitted one NOA in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 27-Sep-2007 **Docket No.** 2007-1570-AIR-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

Respondent Barney M. Davis, LP

Case ID No. 34701

Reg. Ent. Reference No. RN100642040

Media [Statute] Air

Enf. Coordinator Audra L. Ruble

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 111.111(a)(1)(B) and 116.115(c); Air Permit No. 1177, Special Condition No. 4; Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent an excess opacity event that occurred from the Unit 2 Boiler on May 4, 2007, as documented during a record review conducted on July 19, 2007. Specifically, an opacity of 68% was reported during the 30 minute event. Opacity is limited to 20% averaged over a six-minute period. Since the opacity event was not reported timely, it does not meet the demonstrations for an affirmative defense in 30 Tex. Admin. Code § 101.222(d).

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: The opacity event resulted in the discharge of an insignificant amount of pollutants which do not exceed levels protective of human health and/or the environment.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $18

Statutory Limit Test

Violation Final Penalty Total $2,375

This violation Final Assessed Penalty (adjusted for limits) $2,375

Economic Benefit Worksheet

Respondent Barney M. Davis, LP
Case ID No. 34701
Reg. Ent. Reference No. RN100642040
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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)	$1,500	4-May-2007	31-Jul-2007	0.2	$18	n/a	$18
Notes for DELAYED costs	Estimated cost to conduct investigation and implement corrective actions and timely reporting procedures. Date required is the opacity event and Final date is when compliance documentation was submitted.						
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	$1,500	TOTAL	$18

Screening Date 27-Sep-2007 **Docket No.** 2007-1570-AIR-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

Respondent Barney M. Davis, LP

Case ID No. 34701

Reg. Ent. Reference No. RN100642040

Media [Statute] Air

Enf. Coordinator Audra L. Ruble

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 101.201(e) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to report an excess opacity event within 24 hours, as documented during a record review conducted on July 19, 2007. Specifically, the May 4, 2007 event was not reported until May 7, 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

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

Adjustment $9,900

$100

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $95

This violation Final Assessed Penalty (adjusted for limits) $95

Economic Benefit Worksheet

Respondent Barney M. Davis, LP
Case ID No. 34701
Reg. Ent. Reference No. RN100642040
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
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)				0.0	$0	n/a	$0
Notes for DELAYED costs	Economic benefit is addressed under Violation 1.						
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 $0

TOTAL $0

Compliance History

Customer/Respondent/Owner-Operator:	CN602656472	Barney M. Davis, LP	Classification: Average	Rating: 0.10
Regulated Entity:	RN100642040	BARNEY M DAVIS POWER STATION	Classification: Average	Site Rating: 0.10

ID Number(s):

AIR OPERATING PERMITS	ACCOUNT NUMBER	NE0024E
AIR OPERATING PERMITS	PERMIT	34
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000761189
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31184
WASTEWATER	PERMIT	WQ0001490000
WASTEWATER	PERMIT	TPDES0008826
WASTEWATER	PERMIT	TX0008826
AIR NEW SOURCE PERMITS	PERMIT	1177
AIR NEW SOURCE PERMITS	PERMIT	40644
AIR NEW SOURCE PERMITS	PERMIT	45587
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	NE0024E
AIR NEW SOURCE PERMITS	AFS NUM	4835500047
AIR NEW SOURCE PERMITS	PERMIT	81593
AIR NEW SOURCE PERMITS	EPA ID	PSDTX1093
STORMWATER	PERMIT	TXR05K637

Location: 4301 WALDRON RD, CORPUS CHRISTI, TX, 78418 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: October 1, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 1, 2002 to October 1, 2007

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

Name: Audra Ruble Phone: (361) 825-3126

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? Barney M. Davis, L.P.
4. if Yes, who was/were the prior owner(s)? AEP Texas Central Company
5. When did the change(s) in ownership occur? 07/01/2004

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 09/19/2002 (161455)
2 10/24/2002 (161458)
3 11/25/2002 (161462)
4 12/19/2002 (161466)
5 01/28/2003 (161470)
6 02/26/2003 (161429)
7 03/18/2003 (161432)
8 04/21/2003 (161437)

9	05/08/2003	(34457)
10	05/20/2003	(161441)
11	06/16/2003	(161445)
12	07/22/2003	(161449)
13	08/25/2003	(296705)
14	09/23/2003	(296707)
15	10/17/2003	(296709)
16	11/20/2003	(296710)
17	12/29/2003	(296711)
18	01/20/2004	(296712)
19	02/26/2004	(296694)
20	03/11/2004	(262044)
21	03/11/2004	(296703)
22	03/26/2004	(296696)
23	04/23/2004	(296697)
24	05/26/2004	(296699)
25	06/17/2004	(296701)
26	08/24/2004	(352728)
27	09/17/2004	(352729)
28	10/20/2004	(352730)
29	11/16/2004	(352731)
30	12/16/2004	(382112)
31	01/20/2005	(382113)
32	02/22/2005	(382110)
33	03/21/2005	(382111)
34	04/18/2005	(419965)
35	04/18/2005	(419968)
36	05/23/2005	(419966)
37	06/20/2005	(395786)
38	06/23/2005	(419967)
39	08/18/2005	(441082)
40	08/25/2005	(406008)
41	09/19/2005	(441083)
42	10/12/2005	(433109)
43	10/19/2005	(468862)
44	11/21/2005	(468863)
45	12/27/2005	(468864)
46	01/10/2006	(496827)
47	01/10/2006	(496828)
48	01/10/2006	(496829)
49	01/17/2006	(468865)
50	02/17/2006	(468859)
51	03/13/2006	(455489)
52	03/16/2006	(498486)
53	04/03/2006	(468860)
54	04/03/2006	(468861)
55	05/19/2006	(498487)
56	06/23/2006	(498488)
57	07/20/2006	(467595)
58	08/29/2006	(520487)
59	09/28/2006	(520488)
60	10/19/2006	(514658)
61	10/30/2006	(544848)
62	11/27/2006	(544849)
63	12/20/2006	(544850)
64	01/25/2007	(544851)
65	02/28/2007	(575902)
66	03/26/2007	(575903)
67	04/23/2007	(575904)
68	05/24/2007	(575905)
69	06/15/2007	(575906)
70	07/12/2007	(575907)
71	08/16/2007	(569989)
72	08/23/2007	(568415)
73	08/24/2007	(573519)

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

Date: 06/30/2005 (419968)

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: 08/25/2005 (406008)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A)

Rqmt Prov: OP FOP No. O-00034

Description: Failure to submit a complete deviation report for Title V Federal Operating Permit No. O-00034 for the reporting period of April 9, 2004 through April 8, 2005.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 122, SubChapter B 122.146(5)[G]

Rqmt Prov: OP FOP No. O-00034

Description: Failure to reference a previously submitted semiannual report in an annual compliance certification for Title V Federal Operating Permit No. O-00034 for the reporting period of April 9, 2004 through April 8, 2005.

Date: 06/30/2006 (468861)

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: 07/18/2006 (467595)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A)

Description: Failure to submit all instances of deviations as required by rule.

Date: 07/31/2006 (520487)

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: 10/19/2006 (514658)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(1)(B)
30 TAC Chapter 116, SubChapter B 116.115(c)

Rqmt Prov: PERMIT Permit 1177

Description: Failure to prevent the occurrence of visible emissions with an opacity greater than 20% averaged over a six-minute period from the Unit 2 Stack on June 8, 2006, Incident No. 78476.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter F 101.201(e)

Description: Failure to meet the minimum reporting requirements for opacity exceedances, which occurred on June 8, 2006, Incident No. 78476. Specifically Barney M Davis LP failed to submit the initial notifications within 24 hours of the opacity events.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter F 101.201(e)

Description: Failure to meet the minimum reporting requirements for opacity exceedances, which occurred on June 8, 2006 (Incident No. 78476) and July 4, 2006 (Incident No. 78477). Specifically Barney M Davis LP failed to submit the initial notifications within 24 hours of the opacity events.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(1)(B)
30 TAC Chapter 116, SubChapter B 116.115(c)

Rqmt Prov: PERMIT 1177

Description: Failure to prevent the occurrence of visible emissions with an opacity greater than 20% averaged over a six-minute period from the Unit 2 Stack on June 8, 2006 (Incident No. 78476) and July 4, 2006 (Incident No. 78477).

F. Environmental audits.

Notice of Intent Date: 12/06/2004 (347139)
No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
BARNEY M. DAVIS, LP	§	
RN100642040	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1570-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 Barney M. Davis, LP ("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 an electricity generation plant located at 4301 Waldron Road in Corpus Christi, Nueces 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 Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 28, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Four Hundred Seventy Dollars ($2,470) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Nine Hundred Seventy-Six Dollars ($1,976) of the administrative penalty and Four Hundred Ninety-Four Dollars ($494) 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 submitted documentation on July 31, 2007 detailing administrative and physical procedures that have been implemented, including an alarm system, training program, and data review process designed to ensure that emission events are identified and reported in a timely fashion.

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 prevent an excess opacity event that occurred from the Unit 2 Boiler on May 4, 2007, in violation of 30 TEX. ADMIN. CODE §§ 111.111(a)(1)(B) and 116.115(c); Air Permit No. 1177, Special Condition No. 4; and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on July 19, 2007, and based on information reported by the Respondent on May 7, 2007. Specifically, an opacity of 68% was reported during the 30 minute event. Opacity is limited to 20% averaged over a six-minute period. Since the opacity event was not reported timely, it does not meet the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222(d).

2. Failed to report an excess opacity event within 24 hours, in violation of 30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on July 19, 2007. Specifically, the May 4, 2007 event was not reported until May 7, 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: Barney M. Davis, LP, Docket No. 2007-1570-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

Date 3/5/2008

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

Date 12-19-07

GARY EDDINS

Name (Printed or typed)
Authorized Representative of
Barney M. Davis, LP

PLANT MANAGER

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.