EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1737-AIR-E **TCEQ ID:** RN100542695 **CASE NO.:** 34855

RESPONDENT NAME: Eastman Cogeneration L.P.

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: Eastman Congeneration Facility, 300 Kodak Boulevard, Longview, Harrison County

TYPE OF OPERATION: Electric generating 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 17, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Aaron Houston, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8784; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Ms. Stancy Simpson, Manager, Environmental Affairs, Eastman Cogeneration L.P., P.O. Box 7444, Longview, Texas 75607

Mr. Darrell J. Rachels, Vice President, Eastman Cogen Management L.L.C., P.O. Box 7444, Longview, Texas 75607

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:** October 2-3, 2007 **Date of NOV/NOE Relating to this Case:** October 11, 2007 (NOE) **Background Facts:** This was a routine record review. **AIR** Failed to prevent unauthorized emissions of 1,172 pounds of carbon monoxide from EPN GT-HRSG No. 1. The emissions event occurred on November 9, 2006, for eleven hours, due to an improperly installed attemporator valve. Since the emissions event was avoidable, the Respondent failed to meet the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 [Federal Operating Permit O-02082, Special Terms and Conditions 1 and 8, Air Permit 39842, Special Condition 1, 30 TEX. ADMIN. CODE §§ 101.20(1), 116.115(b)(2)(F) and (c), 122.142(4), and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $1,875 **Total Deferred:** $375 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $1,500 **Site Compliance History Classification** **_X_ High __ 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 has implemented the following corrective measures at the Plant by November 10, 2006: a. Correctly installed an attemporator valve; and b. Trained personnel in the proper installation of the attemporator valve.

Additional ID No(s).: HH0229R

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	23-Oct-2007				
PCW	5-Nov-2007	Screening	23-Oct-2007	EPA Due	19-Jul-2008

RESPONDENT/FACILITY INFORMATION

Respondent	Eastman Cogeneration L.P.		
Reg. Ent. Ref. No.	RN100542695		
Facility/Site Region	5-Tyler	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	34855	No. of Violations	1
Docket No.	2007-1737-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Aaron Houston
Multi-Media		EC's Team	EnforcementTeam 5
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: No change due to average performer classification.

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* $625

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

Notes: The Respondent completed corrective actions on November 10, 2006.

Total EB Amounts	$1
Approx. Cost of Compliance	$6,000

0% Enhancement* — **Capped at the Total EB $ Amount* — *Subtotal 6* $0

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,875

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $1,875

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,875

DEFERRAL — 20% Reduction — *Adjustment* -$375

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 $1,500

Screening Date 23-Oct-2007 **Docket No.** 2007-1737-AIR-E **PCW**

Respondent Eastman Cogeneration L.P.

Policy Revision 2 (September 2002)

Case ID No. 34855

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN100542695

Media [Statute] Air

Enf. Coordinator Aaron Houston

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*)	0	0%
	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) 0%

>> **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

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 23-Oct-2007 **Docket No.** 2007-1737-AIR-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

Respondent Eastman Cogeneration L.P.

Case ID No. 34855

Reg. Ent. Reference No. RN100542695

Media [Statute] Air

Enf. Coordinator Aaron Houston

Violation Number 1

Rule Cite(s) Federal Operating Permit O-02082, Special Terms & Conditions 1 and 8, Air Permit 39842, Special Condition 1, 30 Tex. Admin. Code §§ 101.20(1), 116.115(b)(2)(F) and (c), 122.142(4), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent unauthorized emissions of 1,172 lbs of carbon monoxide from EPN GT-HRSG No. 1. The emissions event occurred on November 9, 2006, for eleven hours, due to an improperly installed attemporator valve. Since the emissions event was avoidable, the Respondent failed to meet the demonstrations for an affirmative defense in 30 Tex. Admin. Code § 101.222.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

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	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $1,875

This violation Final Assessed Penalty (adjusted for limits) $1,875

Economic Benefit Worksheet

Respondent Eastman Cogeneration L.P.
Case ID No. 34855
Reg. Ent. Reference No. RN100542695
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	$1,000	9-Nov-2006	10-Nov-2006	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)	$5,000	9-Nov-2006	10-Nov-2006	0.0	$1	n/a	$1

Notes for DELAYED costs: Estimated cost of correctly installing an attemporator valve. Date required is the date of the emissions event. Final date is the date corrective actions were completed.

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 $6,000

TOTAL $1

Compliance History

Customer/Respondent/Owner-Operator:	CN602580292	Eastman Cogeneration L.P.	Classification: AVERAGE	Rating: 1.90
Regulated Entity:	RN100542695	EASTMAN COGENERATION FACILITY	Classification: HIGH	Site Rating: 0.00

ID Number(s):			
	AIR OPERATING PERMITS	ACCOUNT NUMBER	HH0229R
	AIR OPERATING PERMITS	PERMIT	2082
	AIR NEW SOURCE PERMITS	PERMIT	39842
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HH0229R
	AIR NEW SOURCE PERMITS	AFS NUM	4820300059
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX919

Location: 300 Kodak Boulevard, Longview, TX 75603 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: October 22, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 22, 2002 to October 22, 2007

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

Name: Aaron T. Houston Phone: 409-899-8784

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? Eastman Cogeneration L.P.
4. if Yes, who was/were the prior owner(s)? Eastex Cogeneration Limited Partnership
5. When did the change(s) in ownership occur? N/A 09/05/2003

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

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	01/09/2003	(20553)
2	01/31/2003	(22463)
3	03/12/2003	(22532)
4	03/27/2003	(28572)
5	03/27/2003	(28622)
6	08/28/2003	(151487)
7	08/12/2005	(404392)
8	08/12/2005	(404460)
9	11/29/2005	(435655)
10	08/31/2006	(510942)
11	08/31/2006	(510959)
12	10/18/2006	(514831)
13	12/22/2006	(534823)
14	10/11/2007	(596739)

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

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
EASTMAN COGENERATION L.P.	§	
RN100542695	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1737-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 Eastman Cogeneration L.P. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an electric generating plant at 300 Kodak Boulevard in Longview, Harrison County, Texas (the "Plant").

2. The Plant consists of one or more sources as defined in the TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 16, 2007.

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

6. An admistrative penalty in the amount of One Thousand Eight Hundred Seventy-Five Dollars ($1,875) is assessed by the Commission in settlement of the violation alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Dollars ($1,500) of the administrative penalty and Three Hundred Seventy-Five Dollars ($375) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, The Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant by November 10, 2006:

   a. Correctly installed an attemporator valve; and

   b. Trained personnel in the proper installation of the attemporator valve.

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 failed to prevent unauthorized emissions of 1,172 lbs of carbon monoxide from EPN GT-HRSG No. 1, in violation of Federal Operating Permit O-02082, Special Terms and Conditions 1 and 8, Air Permit 39842, Special Condition 1, 30 TEX. ADMIN. CODE §§ 101.20(1), 116.115(b)(2)(F) and (c), 122.142(4), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented in a record review conducted October 2 through 3, 2007. The emissions event occurred on November 9, 2006, for eleven hours, due to an improperly installed attemporator valve. Since the emissions event was avoidable, the Respondent failed to meet the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222.

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: Eastman Cogeneration L.P., Docket No. 2007-1737-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

_____ 3/5/2008
For the Executive Director 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.

_____ 12/17/2007
Signature Date

Darrell J. Rachels
Name (Printed or typed)
Authorized Representative of
Eastman Cogeneration L.P.

Vice President of
CoGen Management, L.L.C.
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.