

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2007-1379-IWD-E TCEQ ID: RN102182474 CASE NO.: 34497**

**RESPONDENT NAME: ATCO-VALLEY PLAZA, LLC**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input 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 checked="" 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> ATCO-VALLEY PLAZA, 13601 Spencer Road (Farm-to-Market Road 529) approximately three miles west of the intersection of Farm-to-Market Road 529 and U.S. Highway 290, north of Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on January 28, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Marc A. Cooke, V.P. Operations, ATCO-Valley Plaza, LLC, 1985 Big Beaver Road, Troy, Michigan 48084  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 9, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 17, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a follow-up investigation.</p> <p><b>WATER</b></p> <p>Failure to maintain a Texas Land Application Permit as required for the disposal of wastewater. Specifically, the Respondent did not renew TCEQ Permit No. 01222, which expired on May 1, 2007 and is continuing to discharge wastewater to the land without authorization [30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2) and TEX. WATER CODE § 26.121(a)].</p>	<p><b>Total Assessed:</b> \$3,600</p> <p><b>Total Deferred:</b> \$720  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,880</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent submitted a new permit application on July 17, 2007.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 300 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 01222;</p> <p>b. 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 request or by any other deadline specified in writing; and</p> <p>c. Within 300 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained, as described in Ordering Provision No a.</p>



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision June 26, 2007

<b>DATES</b>	Assigned	20-Aug-2007	Screening	23-Aug-2007	EPA Due	
	PCW	24-Sep-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	ATCO-VALLEY PLAZA, LLC		
Reg. Ent. Ref. No.	RN102182474		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	34497	No. of Violations	1	
Docket No.	2007-1379-IWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Catherine Albrecht	
Multi-Media		EC's Team	EnforcementTeam 1	
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	(mark with x)

Notes

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

Total EB Amounts	\$355
Approx. Cost of Compliance	\$5,000

**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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

**Screening Date** 23-Aug-2007

**Docket No.** 2007-1379-IWD-E

**PCW**

**Respondent** ATCO-VALLEY PLAZA, LLC

Policy Revision 2 (September 2002)

**Case ID No.** 34497

PCW Revision June 26, 2007

**Reg. Ent. Reference No.** RN102182474

**Media [Statute]** Water Quality

**Enf. Coordinator** Catherine Albrecht

**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 NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <i>number of judgments 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 submitted</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%

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)**

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent is classified as a High Performer.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** -10%

<b>Screening Date</b> 23-Aug-2007	<b>Docket No.</b> 2007-1379-IWD-E	<b>PCW</b>		
<b>Respondent</b> ATCO-VALLEY PLAZA, LLC	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 34497	<i>PCW Revision June 26, 2007</i>			
<b>Reg. Ent. Reference No.</b> RN102182474				
<b>Media [Statute]</b> Water Quality				
<b>Enf. Coordinator</b> Catherine Albrecht				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code §§ 305.65 and 305.125(2) and Tex. Water Code § 26.121(a)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to maintain a Texas Land Application Permit as required for the disposal of wastewater. Specifically, the Respondent did not renew TCEQ Permit No. 01222, which expired on May 1, 2007 and is continuing to discharge wastewater to the land without authorization."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	Major	Moderate	Minor
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="10%"/>	
<b>Matrix Notes</b>	<input type="text" value="100% of the rule was not met by not renewing the TCEQ permit."/>			
<b>Adjustment</b>		<input type="text" value="\$9,000"/>		
		<input type="text" value="\$1,000"/>		
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="4"/>	<b>Number of violation days</b>	
		<input type="text" value="114"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b>	
	monthly	<input type="text" value="x"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
<b>Violation Base Penalty</b>			<input type="text" value="\$4,000"/>	
<input type="text" value="Four monthly events are recommended from the date the permit expired on May 1, 2007 to the screening date of August 23, 2007."/>				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$355"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$3,600"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$3,600"/>		

## Economic Benefit Worksheet

**Respondent** ATCO-VALLEY PLAZA, LLC  
**Case ID No.** 34497  
**Reg. Ent. Reference No.** RN102182474  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**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	\$5,000	1-May-2007	1-Oct-2008	1.4	\$355	n/a	\$355
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs of preparing and submitting a new permit application and obtaining a new permit. Date required is the date the previous permit expired. Final date is the projected date for the issuance of a new permit.

**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

\$5,000

TOTAL

\$355

## Compliance History

Customer/Respondent/Owner-Operator: CN601708860 ATCO-VALLEY PLAZA, LLC Classification: HIGH Rating: 0.00  
Regulated Entity: RN102182474 ATCO-VALLEY PLAZA Classification: HIGH Site Rating: 0.00  
ID Number(s): WASTEWATER PERMIT WQ0001222000  
WASTEWATER LICENSING LICENSE WQ0001222000  
Location: 13601 Spencer Road (Farm-to-Market Road 529) approximately three miles west of the intersection of Farm-to-Market Road 529 and U.S. Highway 290, north of Houston in Harris County Rating Date: September 01 06  
Repeat Violator: NO  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: August 22, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 22, 2002 to August 22, 2007  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Catherine Albrecht Phone: (713)767-3672

### 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 06/08/2006 (261180)  
2 08/22/2006 (484803)  
3 08/17/2007 (567589)
- 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  
ENFORCEMENT ACTION  
CONCERNING  
ATCO-VALLEY PLAZA, LLC  
RN102182474

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2007-1379-IWD-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 ATCO-VALLEY PLAZA, LLC ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located at 13601 Spencer Road (Farm-to-Market Road 529) approximately three miles west of the intersection of Farm-to-Market Road 529 and U.S. Highway 290 north of Houston in Harris County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 August 22, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Three Thousand Six Hundred Dollars (\$3,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Eight Hundred Eighty Dollars (\$2,880) of the administrative penalty and Seven Hundred Twenty Dollars (\$720) 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 a new permit application to the TCEQ on July 17, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to maintain a Texas Land Application Permit as required for the disposal of wastewater, in violation of 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2) and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on July 9, 2007. Specifically, the Respondent did not renew TCEQ Permit No. 01222, which expired on May 1, 2007, and is continuing to discharge wastewater to the land without authorization.

## 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: ATCO-VALLEY PLAZA, LLC, Docket No. 2007-1379-IWD-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 the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 300 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 01222;
  - b. 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 request or by any other deadline specified in writing;
  - c. Within 300 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained, as described in Ordering Provision No. 2.d.; and
  - d. Written certification of compliance shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance and 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:

Water Section, Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. 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 Facility operations referenced in this Agreed Order.
4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 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.
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 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.



ATCO-VALLEY PLAZA, LLC  
DOCKET NO. 2007-1379-IWD-E  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John S. Miller*  
For the Executive Director

2/20/2008  
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.

*Marc A. Cook*  
Signature

2-13-2008  
Date

MARC A. COOK  
Name (Printed or typed)  
Authorized Representative of  
ATCO-VALLEY PLAZA, LLC

*Vice President of Operations*  
Title

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

