

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0960-AIR-E TCEQ ID: RN101241180 CASE NO.: 16384
RESPONDENT NAME: THE SHREDDER COMPANY, LLC

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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: 7380 Doniphan Drive, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Metal casting plant</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.</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 March 24, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="padding-left: 20px;">TCEQ Attorney: Ms. Kathleen C. Decker, Litigation Division, MC 175, (512) 239-6500 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="padding-left: 20px;">TCEQ Enforcement Coordinator: Ms. Miriam Hall, Air Enforcement Section, MC 149, (512) 239-1044</p> <p style="padding-left: 20px;">TCEQ Regional Contact: Mr. Terry McMillan, El Paso Regional Office, MC R-6, (915) 834-4953</p> <p style="padding-left: 20px;">Respondent: Mr. Scott Newell, Jr., CEO and Chairman, The Shredder Company, LLC, 7380 Doniphan Drive, El Paso, Texas 79835</p> <p style="padding-left: 20px;">Respondent's Attorney: Mr. Eric Birch, Birch, Becker & Moorman, LLP, 7000 North Mopac Expressway, Plaza 7000, Second Floor, Austin, Texas 78731</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 22, 2007</p> <p>Date of NOE Relating to this Case: June 1, 2007</p> <p>Background Facts: An EDPRP was filed on August 7, 2007. The matter was referred to SOAH on October 2, 2007. A signed Agreed Order was received on January 28, 2008.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AIR:</p> <p>Failed to amend NSR Permit No. 23499 to include authorization for an 8-ton capacity arc furnace (Letro Melt, Serial No. 7705) as an emission source when a permit amendment was required [30 TEX. ADMIN. CODE § 116.116(b)(1)(C); TEX. HEALTH & SAFETY CODE § 382.085(b); and TCEQ Agreed Order Docket No. 2004-0847-AIR-E].</p>	<p>Total Assessed: \$40,560</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$40,560</p> <p>The Respondent has paid the \$40,560 administrative penalty in full.</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>Findings Order Justification: This is a Findings Order because the violation is a gross deviation from a standard of conduct common in a given industry defined as indifference to legal duty.</p>	<p>Corrective Action Taken:</p> <p>The Executive Director recognizes that the Respondent has submitted an amendment application, Form PI-1 (General Application for Air Preconstruction Permits and Amendments) on December 21, 2007, to amend NSR Permit No. 23499 and request authorization for an 8-ton capacity arc furnace as an emission source at the Plant.</p> <p>Ordering Provisions:</p> <ol style="list-style-type: none"> 1. Immediately, until the date on which the Respondent submits its last certification of compliance, the Respondent shall be liable to the Commission for stipulated penalties for each calendar day, or any part of a day, during which the Respondent fails to comply with any deadline in Ordering Provision 3. The amount of the stipulated penalty shall be one thousand dollars (\$1,000) per day for each day, or part of a day, that a deadline is exceeded. Stipulated penalties shall begin to accrue beginning on the first day that the Respondent fails to submit certification of compliance for the deadline that was not met. 2. Within 10 days after the date of any compliance deadline specified in Ordering Provision No. 3 that the Respondent fails to meet and for which a stipulated penalty is due, the Respondent shall send to the TCEQ the stipulated penalty amount as required by Ordering Provision No. 1. 3. Immediately: <ol style="list-style-type: none"> a. Respond completely and adequately to all letters requesting information concerning the pending permit amendment application for NSR Permit No. 23499 within 30 days of the date of such letters or by any other deadline specified in writing by the Air Permits Division; and

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
		<p>b. Submit progress reports each month to the TCEQ El Paso Regional Office to provide the status of the amendment to NSR Permit No. 23499 within five (5) days after the first day of each month beginning with the first full month following the effective date of this Agreed Order.</p> <p>4. Within 180 days, obtain an amended NSR Permit No. 23499 to include authorization for an 8-ton capacity arc furnace (Letro Melt, Serial No. 7705) as an emission source at the Plant or cease operations until appropriate authorization is obtained.</p> <p>5. Within 195 days, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 4.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

DATES	Assigned	4-Jun-2007	Screening	7-Jun-2007	EPA Due	
	PCW	21-Jun-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	The Shredder Company, LLC		
Reg. Ent. Ref. No.	RN101241180		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	16384	No. of Violations	1
Docket No.	2007-0960-AIR-E	Order Type	Findings
Media Program(s)	Air	Enf. Coordinator	Sandy VanCleave
Multi-Media		EC's Team	Order Compliance Team
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$26,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 31% Enhancement Subtotals 2, 3, & 7 \$8,060

Notes: The Respondent received three NOV's for violations which are not the same or similar to those violations addressed in this enforcement action, one NOV which is the same or similar and one agreed final enforcement order containing a denial of liability.

Culpability Yes 25% Enhancement Subtotal 4 \$6,500

Notes: The TCEQ Air Permits Division sent letters dated November 2 and December 18, 2006 and March 8, 2007 requesting additional information to complete review of a permit amendment application received on June 5, 2006. Due to inadequate response, the application was voided on April 24, 2007.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

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

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts \$466 0% Enhancement* Subtotal 6 \$0
 Approx. Cost of Compliance \$2,500 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$40,560

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

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

Notes:

Final Penalty Amount \$40,560

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$40,560

DEFERRAL 0% Reduction Adjustment \$0

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY \$40,560

Screening Date 7-Jun-2007

Docket No. 2007-0960-AIR-E

PCW

Respondent The Shredder Company, LLC

Policy Revision 2 (September 2002)

Case ID No. 16384

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN101241180

Media [Statute] Air

Enf. Coordinator Sandy VanCleave

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>)	1	5%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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) 31%

>> 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 received three NOVs for violations which are not the same or similar to those violations addressed in this enforcement action, one NOV which is the same or similar and one agreed final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 31%

Screening Date 7-Jun-2007	Docket No. 2007-0960-AIR-E	PCW			
Respondent The Shredder Company, LLC	<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 16384	<i>PCW Revision May 25, 2007</i>				
Reg. Ent. Reference No. RN101241180					
Media [Statute] Air					
Enf. Coordinator Sandy VanCleave					
Violation Number <input type="text" value="1"/>					
Rule Cite(s)	30 Tex. Admin. Code § 116.116(b)(1)(C), Tex. Health & Safety Code § 382.085(b), Tex. Water Code § 7.051(a)(1)(B) and TCEQ Agreed Order Docket No. 2004-0847-AIR-E				
Violation Description	Failed to amend the regulated entity's New Source Review ("NSR") Permit to include authorization for a 8 ton capacity arc furnace.				
Base Penalty		<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
		Percent	<input type="text" value="0%"/>		
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>		
Matrix Notes	The Respondent failed to comply with 100 percent of this rule.				
		Adjustment	<input type="text" value="\$9,000"/>		
<input type="text" value="\$1,000"/>					
Violation Events					
Number of Violation Events		<input type="text" value="26"/>	Number of violation days		
		<input type="text" value="788"/>			
<i>mark only one with an x</i>	daily	<input type="text"/>			
	monthly	<input checked="" type="text" value="x"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
		Violation Base Penalty	<input type="text" value="\$26,000"/>		
26 monthly events are recommended based on the effective date of TCEQ Agreed Order Docket No. 2004-0847-AIR-E, April 10, 2005 to the screening date, June 7, 2007.					
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$466"/>	Violation Final Penalty Total		<input type="text" value="\$40,560"/>
This violation Final Assessed Penalty (adjusted for limits)					<input type="text" value="\$40,560"/>

Economic Benefit Worksheet

Respondent The Shredder Company, LLC
Case ID No. 16384
Reg. Ent. Reference No. RN101241180
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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	\$2,500	10-Apr-2005	31-Dec-2008	3.7	\$466	n/a	\$466
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to amend the entity's NSR permit to include authorization for a 8 ton capacity arc furnace. Date required is the effective date of TCEQ Agreed Order Docket No. 2004-0847-AIR-E. 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

\$2,500

TOTAL

\$466

Compliance History

Customer/Respondent/Owner-Operator:	CN601416092 The Shredder Company, LLC	Classification: AVERAGE	Rating: 10.75																								
Regulated Entity:	RN101241180 THE SHREDDER COMPANY LLC	Classification: AVERAGE	Site Rating: 10.75																								
ID Number(s):	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">PUBLIC WATER SYSTEM/SUPPLY</td> <td style="width: 30%;">REGISTRATION</td> <td style="width: 20%;">0710040</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>5471A</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>23499</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>49944</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>EPA ID</td> <td>TXR000005801</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>SOLID WASTE REGISTRATION # (SWR)</td> <td>83414</td> </tr> <tr> <td>STORMWATER</td> <td>PERMIT</td> <td>TXRNEQ341</td> </tr> <tr> <td>WATER LICENSING</td> <td>LICENSE</td> <td>0710040</td> </tr> </table>			PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	0710040	AIR NEW SOURCE PERMITS	PERMIT	5471A	AIR NEW SOURCE PERMITS	PERMIT	23499	AIR NEW SOURCE PERMITS	PERMIT	49944	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXR000005801	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	83414	STORMWATER	PERMIT	TXRNEQ341	WATER LICENSING	LICENSE	0710040
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STORMWATER	PERMIT	TXRNEQ341																									
WATER LICENSING	LICENSE	0710040																									
Location:	7380 DONIPHAN DR, CANUTILLO, TX, 79835		Rating Date: 9/1/2006 Repeat Violator: NO																								
TCEQ Region:	REGION 06 - EL PASO																										
Date Compliance History Prepared:	June 05, 2007																										
Agency Decision Requiring Compliance History:	Enforcement																										
Compliance Period:	June 05, 2002 to June 05, 2007.																										

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

Name: Sandy VanCleave Phone: (512) 239-2670

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? | <u>The Shredder Company, LLC</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Kessler Enterprises, Inc.</u>
<u>Kessler Industries, Inc.</u> |
| 5. When did the change(s) in ownership occur? | <u>10/04/2002</u> |

Components (Multimedia) for the Site :

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

Effective Date: 04/10/2005	ADMINORDER 2004-0847-AIR-E
Classification: Moderate	
Citation: 30 TAC Chapter 116, SubChapter B 116.116(b)(1)(C)	
5C THC Chapter 382, SubChapter A 382.085(b)	
Rqmt Prov: N/A PERMIT	
Description: Failure to amend a permit for a substantive requirement when a permit amendment is required.	
Classification: Minor	
Citation: 2A TWC Chapter 5, SubChapter A 5.702[G]	
30 TAC Chapter 335, SubChapter J 335.323(a)	
Description: Failure to pay NWG fees for FA No. 83414	

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 | 06/17/2002 | (1484) |
| 2 | 12/18/2002 | (19751) |
| 3 | 01/16/2003 | (18608) |
| 4 | 08/02/2004 | (264701) |
| 5 | 06/29/2004 | (276621) |
| 6 | 06/08/2005 | (392663) |
| 7 | 06/23/2005 | (396944) |
| 8 | 01/27/2006 | (453382) |

9 05/03/2006 (464711)
10 07/26/2006 (488495)
11 05/31/2007 (562359)

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

Date: 08/19/2002 (6114)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.5[G]
30 TAC Chapter 335, SubChapter A 335.8(b)[G]
Description: Failure to deed record area owned by facility that has buried waste piles of slag, refractory, and metal fillings.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter C 335.62
Description: Failure to complete a waste determination for each solid waste generated. At the time of the investigation, a waste determination for the liquid refractory located outside had not been performed.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter A 335.10(b)(10)
30 TAC Chapter 335, SubChapter A 335.10(b)(11)
30 TAC Chapter 335, SubChapter A 335.10(b)(12)
30 TAC Chapter 335, SubChapter A 335.10(b)(13)
30 TAC Chapter 335, SubChapter A 335.10(b)(14)
30 TAC Chapter 335, SubChapter A 335.10(b)(15)
30 TAC Chapter 335, SubChapter A 335.10(b)(16)
30 TAC Chapter 335, SubChapter A 335.10(b)(17)
30 TAC Chapter 335, SubChapter A 335.10(b)(18)
30 TAC Chapter 335, SubChapter A 335.10(b)(19)
30 TAC Chapter 335, SubChapter A 335.10(b)(2)
30 TAC Chapter 335, SubChapter A 335.10(b)(20)
30 TAC Chapter 335, SubChapter A 335.10(b)(21)
30 TAC Chapter 335, SubChapter A 335.10(b)(22)
30 TAC Chapter 335, SubChapter A 335.10(b)(3)
30 TAC Chapter 335, SubChapter A 335.10(b)(4)
30 TAC Chapter 335, SubChapter A 335.10(b)(5)
30 TAC Chapter 335, SubChapter A 335.10(b)(6)
30 TAC Chapter 335, SubChapter A 335.10(b)(7)
30 TAC Chapter 335, SubChapter A 335.10(b)(8)
30 TAC Chapter 335, SubChapter A 335.10(b)(9)
30 TAC Chapter 335, SubChapter A 335.10(b)[G]
30 TAC Chapter 335, SubChapter A 335.10(d)(1)
Description: Failure to properly complete waste manifests. At the time of the investigation, there were several manifests that were not properly completed by the transporter, not properly filled out by the generator, and incorrect copies were kept by the generator and transporter.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter C 335.70(b)
Description: Failure to submit an annual waste summary for the previous year.
Date: 06/07/2005 (392663)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter R 335.513[G]
Description: Failure to document waste classification determinations on all industrial solid wastes.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)
Description: Failure of the generator to provide written notification of changes to information originally provided to the TCEQ Executive Director.
Date: 04/27/2006 (464711)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.116(b)(1)(C)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: PERMIT N/A
Description: Failure to amend a permit for a substantive requirement when a permit amendment is required.
Self Report? NO Classification: Major
Citation: 2A TWC Chapter 7, SubChapter A 7.101
Rqmt Prov: ORDER Ordering Provisions 2.b.-2.d.
Description: Failure to comply with the Ordering Provisions of Commission Order Docket No. 2004-0847-AIR-E.
Date: 03/29/2007 (543000)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)

Description: Failure to ensure that no person may cause, suffer, allow, or permit the disposal of industrial solid waste in such a manner so as to cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to the waters in the state without obtaining specific authorization from the TCEQ.

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
AGAINST
THE SHREDDER COMPANY, LLC
RN101241180

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0960-AIR-E

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding The Shredder Company, LLC ("TSC ") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and TSC, represented by Mr. Eric M. Birch of the law firm of Birch, Becker & Moorman, LLP, presented this agreement to the Commission.

TSC understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, TSC agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon TSC.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. TSC owns and operates a metal casting plant located at 7380 Doniphan Drive in El Paso, El Paso County, Texas ("the Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During an investigation conducted on May 22, 2007, a TCEQ El Paso investigator documented that TSC failed to amend TSC's New Source Review (NSR) Permit No. 23499 to include authorization for an 8 ton capacity arc furnace (Leltro Melt, Serial No. 7705) as an emission source when a permit amendment was required. During the investigation, it was noted that the permit had not been amended and TSC was operating with an expired permit.
4. The Executive Director recognizes that TSC submitted an amendment application, Form PI-1 (General Application for Air Preconstruction Permits and Amendments) on December 21, 2007 to amend NSR Permit No. 23499 and request authorization for an 8 ton capacity arc furnace as an emission source at the Plant.
5. TSC received notice of the violation on or about June 6, 2007.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, TSC is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3., TSC failed to amend TSC's NSR Permit No. 23499 to include authorization for an 8 ton capacity arc furnace (Leltro Melt, Serial No. 7705) as an emission source when a permit amendment was required, in violation of 30 TEX. ADMIN. CODE § 116.116(b)(1)(C); TEX. HEALTH & SAFETY CODE § 382.085(b); and TCEQ Agreed Order Docket No. 2004-0847-AIR-E.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against TSC for violations of the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statute; or for violations of orders or permits issued under such statute.
4. An administrative penalty in the amount of forty thousand five hundred sixty dollars (\$40,560.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. TSC has paid forty thousand five hundred sixty dollars (\$40,560.00) of the administrative penalty.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. TSC is assessed an administrative penalty in the amount of forty thousand five hundred sixty dollars (\$40,560.00) as set forth in Conclusion of Law No. 4 for a violation of TCEQ rules and state statutes. The payment of this administrative penalty and TSC's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: The Shredder Company, LLC; Docket No. 2007-0960-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. Immediately after the effective date of this Agreed Order, until the date on which TSC submits its last certification of compliance as required by Ordering Provision No. 4 of this section, TSC shall be liable to the Commission for stipulated penalties for each calendar day, or any part of a day, during which TSC fails to comply with any deadline in Ordering Provision No. 4. The amount of the stipulated penalty shall be one thousand dollars (\$1,000) per day for each day, or part of a day, that a deadline is exceeded. Stipulated penalties shall begin to accrue beginning on the first day after the effective date of this Agreed Order and shall be calculated through the date that TSC fails to submit certification of compliance for the deadline that was not met. Deadline exceedances to which this Paragraph applies shall not (1) be the subject of a notice of violation; or (2) be treated as violations under 30 TEX. ADMIN. CODE ch. 60. TSC agrees to waive all notice and procedural rights, if any, prior to the assessment of the stipulated penalty amount. This Paragraph does not apply to delays in the processing of the amended permit application due to an act of God, war, strike, riot or other catastrophe, as provided for in TEX. WATER CODE § 7.251 and determined by the Executive Director.
3. Within ten (10) days after the date of each compliance deadline specified in Ordering Provision No. 4 that TSC fails to meet and for which a stipulated penalty is due, TSC shall send to the TCEQ the stipulated penalty amount as required by Ordering Provision No. 2. The stipulated penalty shall be made payable to the Texas Commission on Environmental Quality and shall be sent by certified mail, return receipt requested, with the notation "Re: The Shredder Company, LLC; Docket No. 2007-0960-AIR-E" to the address listed in Paragraph 1 of this section. At the time payment is sent, a copy of the payment and a report concerning the stipulated penalty amount shall be sent to the TCEQ El Paso Regional Office. This report shall include the total amount of the stipulated penalty due and the date for which a certification of compliance was due as required by Ordering Provision No. 4. Payments

of stipulated penalties shall not constitute an admission of liability by TSC. The Commission may pursue collection activities against TSC through the Office of the Attorney General for any amount of stipulated penalties accrued and owing to the Commission as determined by the Executive Director. If such collection activity is initiated, the Office of Attorney General may seek the collection of penalties and attorney's fees in addition to the maximum amount of interest allowed by law. The Commission may further file an enforcement action against TSC through the Office of the Attorney General for civil penalties and injunctive relief for violations of this Agreed Order as provided in Ordering Provision No. 8.

4. It is further ordered that TSC shall undertake the following technical requirements:

a. Immediately upon the effective date of this Agreed Order TSC shall:

i. Respond completely and adequately, as determined by the Air Permits Division of the TCEQ, to all letters requesting information concerning the pending permit amendment application for NSR Permit No. 23499 within 30 days of the date of such letters, or by any other deadline specified in writing by the Air Permits Division. This provision applies only to letters requesting information from the Air Permits Division delivered via U.S. Postal Service, certified mail, return receipt requested and addressed to:

Mr. Chris Charlebois
Executive Vice President & General Manager
The Shredder Company, LLC
7380 Doniphan
Canutillo, Texas 79835

ii. Submit progress reports each month to the TCEQ El Paso Regional Office to provide the status of the amendment to NSR Permit No. 23499 within five (5) days after the first day of each month beginning with the first full month following the effective date of this Agreed Order. The reports shall be submitted via facsimile transmission and TSC shall keep records to confirm transmission of the report. TSC shall have the burden to provide proof of transmission of the reports. The reports shall, at a minimum, identify the date(s) and subject matter of any requests for information from the Air Permits Division and the date of TSC's responses to those requests as well as any activity performed by TSC since the date of the last report to further the permit application

process. If requested by the TCEQ Regional Office, TSC shall provide the Regional Office with copies of the Air Permits Division's requests for information and TSC's responses to the requests within five (5) days of the request(s). The copies may be provided by facsimile transmission, electronic mail, hand delivery, certified or regular mail, as directed by the Regional Office.

- b. Within 180 days after the effective date of this Agreed Order, TSC shall obtain an amended NSR Permit No. 23499 to include authorization for an 8 ton capacity arc furnace (Leltro Melt, Serial No. 7705) as an emission source at the Plant in accordance with 30 TEX. ADMIN. CODE § 116.116(b), or cease operations until appropriate authorization is obtained.
- c. Within 195 days after the effective date of this Agreed Order, TSC shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No.4.b.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Terry McMillan, El Paso Air Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 E. Franklin Avenue, Suite 560
El Paso, Texas 79901-1212

5. The provisions of this Agreed Order shall apply to and be binding upon TSC. TSC is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
6. If TSC 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, TSC's failure to comply is not a violation of this Agreed Order and will not initiate the stipulated penalty provisions contained in Ordering Provision Nos. 2 and 3. TSC has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. TSC shall immediately notify the Executive Director after TSC becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 TSC shall be made in writing to the Executive Director through the Air Permits Division. Extensions are not effective until TSC receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to TSC if the Executive Director determines that TSC has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. This Agreed Order, issued by the Commission, shall not be admissible against TSC 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.
11. 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

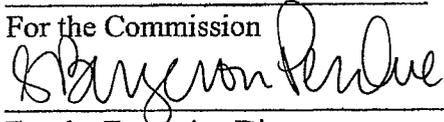
transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

12. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to TSC, or three days after the date on which the Commission mails notice of the Order to TSC, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

2/27/08

Date

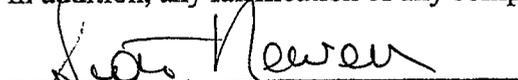
I, the undersigned, have read and understand the attached Agreed Order in the matter of The Shredder Company, LLC. I represent that I am authorized to agree to the attached Agreed Order on behalf of The Shredder Company, LLC, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, The Shredder Company, LLC waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order including all stipulated penalties, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations and stipulated penalties set forth in this Agreed Order.

I also understand that The Shredder Company, LLC's failure to comply with the Ordering Provisions, if any, in this order and/or its failure to timely pay the administrative or stipulated penalty amounts, may result in:

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

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


Signature

January 25, 2008
Date

Scott Newell Jr.
Name (printed or typed)
Authorized Representative
The Shredder Company, LLC

CEO / CHAIRMAN
Title