EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0903-AIR-E **TCEQ ID:** RN100216274 **CASE NO.:** 35989

RESPONDENT NAME: Texas A&M University

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: Texas A&M University College Station Campus, 1111 Research Parkway, College Station, Brazos County

TYPE OF OPERATION: Boilers used for steam, hot water, and heating

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 November 24, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Nathan G. Jones, Manager, Water & Environmental Services, Texas A&M University, 1584 TAMU, College Station, Texas 77843

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 _X_ Routine ___ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** March 26, May 29, and June 2, 2008 **Date of NOV/NOE Relating to this Case:** May 16 and July 3, 2008 (NOE) **Background Facts:** These were routine investigations and a record review. **AIR** 1) Failure to comply with the 90% system reliability requirement for the Nitrogen oxides ("NOx") Continuous Emission Monitoring System ("CEMS"). Specifically, the Respondent reported a total of 326 hours of NOx CEMS downtime for the October 24, 2006 through October 24, 2007 time period, which was 14.66% of the total operating period of 2,224 hours. This demonstrated a 85.34% system reliability for this operating period [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), Air New Source Review ("NSR") Permit No. 44762, Special Condition 10F, and Federal Operating Permit No. O-01624, Special Terms and Conditions 6A]. 2) Failure to maintain permitted emissions limits. Specifically, the Respondent exceeded the hourly average NOx emissions limit of 0.035 pounds per million British thermal unit ("lb/MMBtu") from Boiler No. 12 with a maximum of 0.041 lb/MMBtu, for 81 hours out of 3,520 hours total operating time [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), Air NSR Permit No. 44762, Special Condition 3, and Federal Operating Permit No. O-01624, Special Terms and Conditions 6]. 3) Failure to pay fees and associated late	**Total Assessed:** $4,375 **Total Deferred:** $875 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $3,500 **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	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order: i. Submit payment for all outstanding fees, including any associated penalties and interest; and ii. Develop and begin implementing improved operating procedures to ensure that the 90% system reliability requirement for the NOx CEMS is met and that the hourly average NOx emissions limit is maintained. b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

fees for TCEQ Financial Account Nos. 91160008, 91370005, and 90210017 for fiscal year 2008 [30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. WATER CODE § 5.702].		

Additional ID No(s).: Air Account No. BM0032V

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

TCEQ

DATES					
Assigned	26-May-2008				
PCW	19-Jun-2008	Screening	2-Jun-2008	EPA Due	21-Dec-2008

RESPONDENT/FACILITY INFORMATION

Respondent	Texas A&M University		
Reg. Ent. Ref. No.	RN100216274		
Facility/Site Region	9-Waco	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	35989	No. of Violations	3
Docket No.	2008-0903-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Samuel Short
		EC's Team	Enforcement Team 3

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $3,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 25.0% Enhancement — *Subtotals 2, 3, & 7* $875

Notes: An enhancement is recommended for having one NOV for the same or similar violations and one Agreed Order with denial within the last five years.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $0

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $219
Approx. Cost of Compliance $2,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $4,375

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $4,375

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $4,375

DEFERRAL 20.0% Reduction — *Adjustment* -$875

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 $3,500

Screening Date	2-Jun-2008	**Docket No.** 2008-0903-AIR-E	**PCW**
Respondent	Texas A&M University		*Policy Revision 2 (September 2002)*
Case ID No.	35989		*PCW Revision June 12, 2008*
Reg. Ent. Reference No.	RN100216274		
Media [Statute]	Air		
Enf. Coordinator	Samuel Short		

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*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) 25%

>> 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

An enhancement is recommended for having one NOV for the same or similar violations and one Agreed Order with denial within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

PCW

Policy Revision 2 (September 2002)
PCW Revision June 12, 2008

Screening Date	2-Jun-2008
Docket No.	2008-0903-AIR-E
Respondent	Texas A&M University
Case ID No.	35989
Reg. Ent. Reference No.	RN100216274
Media [Statute]	Air
Enf. Coordinator	Samuel Short
Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Tex. Health & Safety Code § 382.085(b), Air New Source Review ("NSR") Permit No. 44762, Special Condition 10F, and Federal Operating Permit No. O-01624, Special Terms and Conditions 6A
Violation Description	Failed to comply with the 90% system reliability requirement for the Nitrogen oxides ("NOx") Continuous Emission Monitoring System ("CEMS"). Specifically, the Respondent reported a total of 326 hours of NOx CEMS downtime for the October 24, 2006 through October 24, 2007 time period, which was 14.66% of the total operating period of 2,224 hours. This demonstrated a 85.34% system reliability for this operating period.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceeds levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1

68 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction — $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 for this violation.

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $157

Statutory Limit Test

Violation Final Penalty Total $1,250

This violation Final Assessed Penalty (adjusted for limits) $1,250

Economic Benefit Worksheet

Respondent Texas A&M University
Case ID No. 35989
Reg. Ent. Reference No. RN100216274
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	$1,000	24-Oct-2006	19-Jan-2009	2.24	$7	$149	$157
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: The estimated cost to comply with the 90% system reliability requirement for the NOx CEMS. Date required is the start of the rolling annual average time period and the final date is the projected date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Avoided Costs (ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs))							
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $1,000

TOTAL $157

Screening Date 2-Jun-2008 **Docket No.** 2008-0903-AIR-E **PCW**

Respondent Texas A&M University *Policy Revision 2 (September 2002)*

Case ID No. 35989 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN100216274

Media [Statute] Air

Enf. Coordinator Samuel Short

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Tex. Health & Safety Code § 382.085(b), Air NSR Permit No. 44762, Special Condition 3, and Federal Operating Permit No. O-01624, Special Terms and Conditions 6

Violation Description Failed to maintain permitted emissions limits. Specifically, the Respondent exceeded the hourly average NOx emissions limit of 0.035 pounds per million British thermal unit ("lb/MMBtu") from Boiler No. 12 with a maximum of 0.041 lb/MMBtu, for 81 hours out of 3,520 hours total operating time.

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: 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 as a result of this violation.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 | 81 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.

Good Faith Efforts to Comply

0.0% Reduction $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 for this violation.

Violation Subtotal $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $62

Statutory Limit Test

Violation Final Penalty Total $3,125

This violation Final Assessed Penalty (adjusted for limits) $3,125

Economic Benefit Worksheet

Respondent Texas A&M University
Case ID No. 35989
Reg. Ent. Reference No. RN100216274
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling	$1,000	26-Oct-2007	19-Jan-2009	1.24	$62	n/a	$62
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: The estimated cost to maintain the hourly average NOx emissions limit of 0.035 lb/MMBtu from Boiler No. 12. Date required is the date the exceedances began and the final date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $1,000

TOTAL $62

Screening Date 2-Jun-2008 **Docket No.** 2008-0903-AIR-E **PCW**

Respondent Texas A&M University *Policy Revision 2 (September 2002)*

Case ID No. 35989 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN100216274

Media [Statute] Air

Enf. Coordinator Samuel Short

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.51(a)(3) and Tex. Water Code § 5.702

Violation Description Failed to pay fees and associated late fees for TCEQ Financial Account Nos. 91160008, 91370005, and 90210017 for fiscal year 2008.

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

Percent 0%

Matrix Notes: N/A

Adjustment $10,000

$0

Violation Events

Number of Violation Events: ____ Number of violation days: ____

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Good Faith Efforts to Comply

0.0% Reduction $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 for this violation.

Violation Subtotal $0

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

This violation Final Assessed Penalty (adjusted for limits) $0

Economic Benefit Worksheet

Respondent Texas A&M University
Case ID No. 35989
Reg. Ent. Reference No. RN100216274
Media Air
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or $							
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	N/A						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $0

TOTAL: $0

Compliance History

Customer/Respondent/Owner-Operator:	CN600307623	Texas A&M University	Classification: AVERAGE	Rating: 2.46
Regulated Entity:	RN100216274	TEXAS A&M UNIVERSITY COLLEGE STATION CAMPUS	Classification: AVERAGE	Site Rating: 5.95

ID Number(s):

AIR NEW SOURCE PERMITS	PERMIT	3432
AIR NEW SOURCE PERMITS	PERMIT	12905
AIR NEW SOURCE PERMITS	PERMIT	44762
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	BM0032V
AIR NEW SOURCE PERMITS	AFS NUM	4804100003
AIR NEW SOURCE PERMITS	REGISTRATION	51136
AIR NEW SOURCE PERMITS	REGISTRATION	79666
AIR OPERATING PERMITS	PERMIT	2054
AIR OPERATING PERMITS	ACCOUNT NUMBER	BM0032V
AIR OPERATING PERMITS	PERMIT	1624
AIR OPERATING PERMITS	PERMIT	2051

Location: 1111 RESEARCH PKWY, COLLEGE STATION, TX, 77845 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: June 02, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 02, 2003 to June 02, 2008

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

Name: Samuel Short Phone: (512) 239-5363

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.

Effective Date: 10/02/2006 ADMINORDER 2006-0296-AIR-E

Classification: Major

Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to submit compliance certification within the required time period.

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to submit compliance certification within the required time period.

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	07/19/2004	(282591)
2	01/26/2005	(348379)
3	02/10/2005	(349465)
4	04/22/2005	(378596)
5	05/18/2005	(392668)
6	07/05/2005	(398788)
7	10/13/2005	(406960)
8	11/04/2005	(407243)
9	01/09/2006	(450286)
10	01/24/2006	(453124)
11	02/09/2006	(454910)
12	02/28/2006	(455680)
13	03/07/2006	(455970)
14	06/01/2006	(480566)

15	10/26/2006	(517323)
16	11/14/2006	(519256)
17	01/18/2007	(535978)
18	01/26/2007	(538028)
19	01/26/2007	(537971)
20	03/08/2007	(543163)
21	11/01/2007	(598935)
22	01/14/2008	(613390)
23	05/19/2008	(654141)

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

Date: 05/19/2008 (654190)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)

Description: Failure to comply with the emission limits for NOx and CO as required in SC 3 of NSR Permit No. 44762, pursuant to 30 TAC 116.115(c); and SC 6 of FOP O-01624, pursuant to 30 TAC 122.143(4).

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**
TEXAS A&M UNIVERSITY	§	
RN100216274	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0903-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 Texas A&M University ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 5 and 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 boilers used for steam, hot water, and heating at 1111 Research Parkway in College Station, Brazos 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 the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notices of the violations alleged in Section II ("Allegations") on or about May 21, 2008 and July 8, 2008.

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 Four Thousand Three Hundred Seventy-Five Dollars ($4,375) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Five Hundred Dollars ($3,500) of the administrative penalty and Eight Hundred Seventy-Five Dollars ($875) 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 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.

10. 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.

11. 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 comply with the 90% system reliability requirement for the Nitrogen oxides ("NOx") Continuous Emission Monitoring System ("CEMS"), in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), Air New Source Review ("NSR") Permit No. 44762, Special Condition 10F, and Federal Operating Permit No. O-01624, Special Terms and Conditions 6A, as documented during an investigation conducted on March 26, 2008. Specifically, the Respondent reported a total of 326 hours of NOx CEMS downtime for the October 24, 2006 through October 24, 2007 time period, which was 14.66% of the total operating period of 2,224 hours. This demonstrated a 85.34% system reliability for this operating period.

2. Failed to maintain permitted emissions limits, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), Air NSR Permit No. 44762, Special Condition 3, and Federal Operating Permit No. O-01624, Special Terms and Conditions 6, as documented during a record review conducted on May 29, 2008. Specifically, the Respondent exceeded the hourly average NOx emissions limit of 0.035 pounds per million British thermal unit ("lb/MMBtu") from Boiler No. 12 with a maximum of 0.041 lb/MMBtu, for 81 hours out of 3,520 hours total operating time.

3. Failed to pay fees and associated late fees for TCEQ Financial Account Nos. 91160008, 91370005, and 90210017 for fiscal year 2008, in violation of 30 TEX. ADMIN. CODE

§ 290.51(a)(3) and TEX. WATER CODE § 5.702, as documented during an investigation conducted on June 2, 2008.

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: Texas A&M University, Docket No. 2008-0903-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order;

      i. Submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Re: Texas A&M University, TCEQ Financial Administration Account Nos. 91160008, 91370005, and 90210017", to the address listed in Ordering Provision No. 1; and

      ii. Develop and begin implementing improved operating procedures to ensure that the 90% system reliability requirement for the NOx CEMS is met and that the hourly average NOx emissions limit is maintained, in accordance with NSR Permit No. 44762; and

   b. Within 45 days after the effective date of this Agreed Order, 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. 2.a. 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:

Air Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

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 Plant 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ _____
For the Executive Director Date 11/3/2008

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 9/8/08

Nathan G. Jones Manager, Water & Environmental Svcs.
Name (Printed or typed) Title
Authorized Representative of
Texas A&M University

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.