

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0994-AIR-E **TCEQ ID:** RN100804053 **CASE NO.:** 36104

RESPONDENT NAME: Atrium Companies, Inc. dba Danvid Window

ORDER TYPE:		
<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	
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: Danvid Window, 1813 Kelly Boulevard, Carrollton, Dallas County</p> <p>TYPE OF OPERATION: Window and door manufacturing 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 location.</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 December 1, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-0321; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Robert M. Reed, Jr., Registered Agent, Atrium Companies, Inc., 3890 West Northwest Highway, Suite 500, Dallas, Texas 75220 Mr. Philip J. Ragona, Sr. Vice President and General Counsel, Atrium Companies, Inc., 3890 West Northwest Highway, Suite 500, Dallas, Texas 75220 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 2, 2008</p> <p>Date of NOV/NOE Relating to this Case: June 11, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>AIR</p> <p>Failure to timely submit the 2007 emissions inventory. Specifically, the 2007 emissions inventory was due no later than March 31, 2008, and the Respondent filed the inventory on May 30, 2008 [30 TEX. ADMIN. CODE § 101.10(e) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$770</p> <p>Total Deferred: \$154 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$616</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent submitted the 2007 emissions inventory report on May 30, 2008.</p>

Additional ID No(s): DB4192G



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	10-Jun-2008	Screening	20-Jun-2008	EPA Due	
	PCW	19-Jun-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Atrium Companies, Inc. dba Danvid Window
Reg. Ent. Ref. No.	RN100804053
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36104	No. of Violations	1
Docket No.	2008-0994-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Harvey Wilson
		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**

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: An enhancement is recommended because the Respondent previously received one NOV for the same violation, filed one Notice of Intent letter, and one Disclosure of Violations.

Culpability **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 20-Jun-2008

Docket No. 2008-0994-AIR-E

PCW

Respondent Atrium Companies, Inc. dba Danvid Window

Policy Revision 2 (September 2002)

Case ID No. 36104

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN100804053

Media [Statute] Air

Enf. Coordinator Harvey Wilson

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)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	1	-2%

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) 2%

>> **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 because the Respondent previously received one NOV for the same violation, filed one Notice of Intent letter, and one Disclosure of Violations.

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

<p>Screening Date 20-Jun-2008</p> <p>Respondent Atrium Companies, Inc. dba Danvid Window</p> <p>Case ID No. 36104</p> <p>Reg. Ent. Reference No. RN100804053</p> <p>Media [Statute] Air</p> <p>Enf. Coordinator Harvey Wilson</p> <p>Violation Number <input type="text" value="1"/></p> <p>Rule Cite(s)</p> <p>Violation Description</p>	<p>Docket No. 2008-0994-AIR-E</p> <p style="text-align: right;">PCW <small>Policy Revision 2 (September 2002) PCW Revision June 12, 2008</small></p> <p>30 Tex. Admin. Code § 101.10(e) and Tex. Health & Safety Code § 382.085(b)</p> <p>Failed to timely submit the 2007 emissions inventory. Specifically, the 2007 emissions inventory was due no later than March 31, 2008, and the Respondent filed the inventory on May 30, 2008.</p>																			
Base Penalty <input type="text" value="\$10,000"/>																				
>> Environmental, Property and Human Health Matrix																				
<p>OR</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td>Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Harm																			
Release	Major	Moderate	Minor																	
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>> Programmatic Matrix																				
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	Major	Moderate	Minor																	
Falsification	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>																
Adjustment <input type="text" value="\$9,000"/>																				
<input type="text" value="\$1,000"/>																				
Violation Events																				
<p>Number of Violation Events <input type="text" value="1"/> <input type="text" value="60"/> Number of violation days</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="6" style="vertical-align: middle;"><i>mark only one with an x</i></td> <td>daily</td> <td><input type="text"/></td> </tr> <tr> <td>monthly</td> <td><input type="text"/></td> </tr> <tr> <td>quarterly</td> <td><input type="text"/></td> </tr> <tr> <td>semiannual</td> <td><input type="text"/></td> </tr> <tr> <td>annual</td> <td><input type="text"/></td> </tr> <tr> <td>single event</td> <td style="text-align: center;">x</td> </tr> </table> <p style="text-align: center;">One single event is recommended.</p>	<i>mark only one with an x</i>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x	Violation Base Penalty <input type="text" value="\$1,000"/>						
<i>mark only one with an x</i>		daily	<input type="text"/>																	
		monthly	<input type="text"/>																	
		quarterly	<input type="text"/>																	
		semiannual	<input type="text"/>																	
		annual	<input type="text"/>																	
	single event	x																		
Good Faith Efforts to Comply																				
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">25.0% Reduction</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Before NOV NOV to EDPRP/Settlement Offer</td> <td></td> </tr> <tr> <td>Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Ordinary</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> </tr> <tr> <td>N/A</td> <td colspan="2" style="text-align: center;">(mark with x)</td> </tr> </table> <p>Notes</p> <p style="text-align: center;">The Respondent came into compliance on May 30, 2008 and the NOE was not issued until June 11, 2008.</p>		25.0% Reduction			Before NOV NOV to EDPRP/Settlement Offer		Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	x	<input type="text"/>	N/A	(mark with x)		Violation Subtotal <input type="text" value="\$750"/>				
	25.0% Reduction																			
	Before NOV NOV to EDPRP/Settlement Offer																			
Extraordinary	<input type="text"/>	<input type="text"/>																		
Ordinary	x	<input type="text"/>																		
N/A	(mark with x)																			
Economic Benefit (EB) for this violation																				
Estimated EB Amount <input type="text" value="\$4"/>	Statutory Limit Test																			
Violation Final Penalty Total <input type="text" value="\$770"/>																				
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$770"/>																				

Economic Benefit Worksheet

Respondent Atrium Companies, Inc. dba Danvid Window
Case ID No. 36104
Reg. Ent. Reference No. RN100804053
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$500	31-Mar-2008	30-May-2008	0.16	\$4	n/a	\$4
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 of submitting the 2007 Emissions inventory. The Date Required is the date the report was due. The Final Date is the 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

\$500

TOTAL

\$4

Citation: 30 TAC Chapter 115, SubChapter E 115.421(a)(9)

Description: ADHESIVE NOT COMPLIANT

Viol. Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter A 101.10

Description: NO EMISSIONS INVENTORIES SUBMITTED

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
ATRIUM COMPANIES, INC. DBA
DANVID WINDOW
RN100804053

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0994-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 Atrium Companies, Inc. dba Danvid Window ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a window and door manufacturing plant at 1813 Kelly Boulevard in Carrollton, Dallas 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 notice of the violations alleged in Section II ("Allegations") on or about June 16, 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 Seven Hundred Seventy Dollars (\$770) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Sixteen Dollars (\$616) of the administrative penalty and One Hundred Fifty-Four Dollars (\$154) 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 the 2007 emissions inventory report on May 30, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to timely submit the 2007 emissions inventory, in violation of 30 TEX. ADMIN. CODE § 101.10(e) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on May 2, 2008. Specifically, the 2007 emissions inventory was due no later than March 31, 2008, and the Respondent filed the inventory on May 30, 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: Atrium Companies, Inc. dba Danvid Window, Docket No. 2008-0994-AIR-E" to:

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

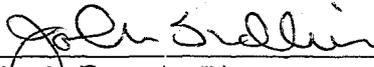
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Atrium Companies, Inc. dba Danvid Window
DOCKET NO. 2008-0994-AIR-E
Page 4

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

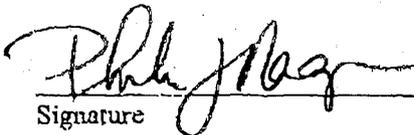
Date 11/14/2008

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 11-03-08

Philip J Ragone

Name (Printed or typed)
Authorized Representative of
Atrium Companies, Inc. dba Danvid Window

Title Sr. VP and General Counsel

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.

