

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0883-AIR-E **TCEQ ID:** RN100212216 **CASE NO.:** 35964

RESPONDENT NAME: Kuraray America, Inc.

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: Eval Business Unit, 11500 Bay Area Boulevard, Pasadena, Harris County</p> <p>TYPE OF OPERATION: Chemical manufacturing plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, MC R-13, (210) 403-4006; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Stan R. Lewis, Director Support Services, Kuraray America, Inc., 2625 Bay Area Boulevard, Suite 300, Houston, Texas 77059-0300 Mr. George Avdey, President, Kuraray America, Inc., 2625 Bay Area Boulevard, Suite 300, Houston, Texas 77059-0300 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 8, 2008</p> <p>Date of NOV/NOE Relating to this Case: May 23, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>AIR</p> <p>Failure to maintain emissions at or below the rates listed in the maximum allowable emission rate table ("MAERT") for the Acetic Acid Scrubber (emission point number 403). Specifically, the volatile organic compound ("VOC") emissions rate during stack tests conducted on February 8 and March 11, 2008 were 9.36 lbs/hr and 0.14 lbs/hr, respectively, but the MAERT limit was 0.08 lbs/hr [30 TEX. ADMIN. CODE § 116.115(c), New Source Review Permit No. 9576, Special Condition 1 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$20,200</p> <p>Total Deferred: \$4,040 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$8,080</p> <p>Total Paid to General Revenue: \$8,080</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. Removed a source of VOCs to the Acetic Acid Scrubber, which reduced VOC emissions from the scrubber from 9.36 lbs/hr to 0.14 lbs/hr, as demonstrated during the March 11, 2008 stack test; and</p> <p>b. Submitted a permit amendment application on May 15, 2008 requesting that the permitted limit for VOC emissions from the Acetic Acid Scrubber be raised from 0.08 lbs/hr to 0.17 lbs/hr.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit amendment application within 30 days after the date of such requests, or by any other deadline specified in writing;</p> <p>b. Within 180 days after the effective date of this Agreed Order, submit written certification demonstrating compliance with the existing or amended VOC permit limit for the Acetic Acid Scrubber, or that operation has ceased until such time that appropriate authorization is obtained; and</p> <p>c. The written certification required by Ordering Provision 2.b. shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b.</p>

Attachment A
Docket Number: 2008-0883-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Kuraray America, Inc.
Payable Penalty Amount: Sixteen Thousand One Hundred Sixty Dollars (\$16,160)
SEP Amount: Eight Thousand Eighty Dollars (\$8,080)
Type of SEP: Pre-approved
Third-Party Recipient: Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program
Location of SEP: Harris County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Harris County. The contribution will be used in accordance with the *Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality*.

SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

Kuraray America, Inc.
Agreed Order – Attachment A

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision June 12, 2008

DATES	Assigned	27-May-2008	Screening	29-May-2008	EPA Due	17-Feb-2009
	PCW	13-Aug-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Kuraray America, Inc.
Reg. Ent. Ref. No.	RN100212216
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	35964	No. of Violations	1
Docket No.	2008-0883-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Trina Grieco
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section	
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 \$20,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
Compliance History	1.0% Enhancement Subtotals 2, 3, & 7 \$200
Notes	Penalty enhancement due to two previous NOV's for dissimilar violations. Penalty reduction due to one notice of audit and one disclosure of violations submitted.
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
<small>Total EB Amounts</small>	\$150
<small>Approx. Cost of Compliance</small>	\$3,000
	*Capped at the Total EB \$ Amount
SUM OF SUBTOTALS 1-7	Final Subtotal \$20,200
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment \$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>	
Notes	
	Final Penalty Amount \$20,200
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty \$20,200
DEFERRAL	20.0% Reduction Adjustment -\$4,040
<small>Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
Notes	Deferral offered for expedited settlement.
PAYABLE PENALTY	\$16,160

Screening Date 29-May-2008

Docket No. 2008-0883-AIR-E

PCW

Respondent Kuraray America, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35964

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN100212216

Media [Statute] Air

Enf. Coordinator Trina Grieco

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	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) 1%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Penalty enhancement due to two previous NOVs for dissimilar violations. Penalty reduction due to one notice of audit and one disclosure of violations submitted.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 1%

Screening Date 29-May-2008 **Docket No.** 2008-0883-AIR-E **PCW**

Respondent Kuraray America, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 35964 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN100212216

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), New Source Review Permit No. 9576, Special Condition 1 and Tex. Health & Safety Code § 382.085(b)

Violation Description
Failed to maintain emissions at or below the rates listed in the maximum allowable emission rate table ("MAERT") for the Acetic Acid Scrubber (emission point number 403). Specifically, volatile organic compound ("VOC") emissions rates during stack tests conducted on February 8 and March 11, 2008 were 9.36 lbs/hr and 0.14 lbs/hr, respectively, but the MAERT limit was 0.08 lbs/hr.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="50%"/>
	Major	Moderate	Minor	
	Actual <input type="text"/>	x	<input type="text"/>	
	Potential <input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
Falsification <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes
Human health or the environment in the Houston-Galveston-Brazoria nonattainment area has been exposed to significant amounts of pollutants that did not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	x
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Four monthly events are recommended from the February 8, 2008 stack test to the May 29, 2008 screening date.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

Notes
The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Kuraray America, Inc.

Case ID No. 35964

Reg. Ent. Reference No. RN100212216

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
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$500	8-Feb-2008	15-Jan-2009	0.94	\$2	\$31	\$33
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)	\$2,500	8-Feb-2008	15-Jan-2009	0.94	\$117	n/a	\$117

Notes for DELAYED costs

Estimated cost to remove a source of VOCs to the Acetic Acid Scrubber to lower emissions (\$500) and amend Permit No. 9576 to demonstrate that the Acetic Acid Scrubber is operating within permitted limits (\$2,500). Date required is the first failed stack test date. Final dates are the projected dates 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

\$3,000

TOTAL

\$150

Compliance History

Customer/Respondent/Owner-Operator: CN603315953 Kuraray America, Inc. Classification: Rating:
 Regulated Entity: RN100212216 EVAL BUSINESS UNIT Classification: HIGH Site Rating: 0.00

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG13100
	AIR OPERATING PERMITS	PERMIT	1561
	AIR OPERATING PERMITS	PERMIT	3011
	AIR NEW SOURCE PERMITS	PERMIT	9576
	AIR NEW SOURCE PERMITS	PERMIT	28727
	AIR NEW SOURCE PERMITS	PERMIT	33413
	AIR NEW SOURCE PERMITS	PERMIT	44286
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG13100
	AIR NEW SOURCE PERMITS	AFS NUM	4820100404
	AIR NEW SOURCE PERMITS	REGISTRATION	80133
	AIR NEW SOURCE PERMITS	REGISTRATION	81932
	AIR NEW SOURCE PERMITS	REGISTRATION	84790
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD981148059
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	32728
	STORMWATER	PERMIT	TXR05L364
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1012402

Location: 11500 BAY AREA BLVD, PASADENA, TX, 77507 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: May 28, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 28, 2003 to May 28, 2008

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

Name: Trina Grieco Phone: (210) 403-4006

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? Kuraray America, Inc.
4. If Yes, who was/were the prior owner(s)? Eval Company of America
5. When did the change(s) in ownership occur? 1-Jan-08

Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CEDS Inv. Track. No.)

- | | | |
|----|------------|----------|
| 1 | 08/05/2003 | (9869) |
| 2 | 07/09/2004 | (280512) |
| 3 | 07/09/2004 | (280311) |
| 4 | 07/30/2004 | (285936) |
| 5 | 07/30/2004 | (283054) |
| 6 | 07/30/2004 | (281416) |
| 7 | 07/30/2004 | (284586) |
| 8 | 07/30/2004 | (282841) |
| 9 | 07/30/2004 | (281871) |
| 10 | 07/30/2004 | (283328) |
| 11 | 08/06/2004 | (287135) |
| 12 | 08/06/2004 | (287137) |
| 13 | 08/10/2004 | (288709) |
| 14 | 08/11/2004 | (289080) |

15 08/12/2004 (289591)
 16 08/17/2004 (289225)
 17 08/30/2004 (258301)
 18 09/01/2004 (291508)
 19 09/02/2004 (291910)
 20 09/03/2004 (290774)
 21 09/08/2004 (288508)
 22 09/09/2004 (291479)
 23 01/24/2005 (333966)
 24 05/03/2005 (379239)
 25 05/06/2005 (380525)
 26 07/07/2005 (380138)
 27 07/27/2005 (401903)
 28 07/27/2005 (401461)
 29 07/27/2005 (381339)
 30 07/28/2005 (402349)
 31 08/03/2005 (403227)
 32 08/08/2005 (404023)
 33 08/10/2005 (403935)
 34 08/12/2005 (404779)
 35 08/18/2005 (405942)
 36 08/18/2005 (405719)
 37 08/29/2005 (407273)
 38 08/30/2005 (406999)
 39 09/08/2005 (418921)
 40 09/08/2005 (418685)
 41 05/24/2006 (454601)
 42 06/08/2006 (481222)
 43 09/01/2006 (488863)
 44 08/22/2007 (573261)
 45 01/07/2008 (612101)
 46 05/23/2008 (646252)

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

Date: 07/07/2005 (380138)

Self Report? NO Classification: Moderate

Citation: 40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.8(a)
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT NNN 60.665(b)

Description: Failure to conduct the initial performance test as per 40 CFR 60.8(a) for Flare 51 serving Line 1100, Line 1200, Line 1300, and Recovery under NSPS, Subpart NNN to demonstrate compliance with 40 CFR 60.18 for the flare. Also, failure to demonstrate compliance with 40 CFR 60.665(b).

Self Report? NO Classification: Minor

Citation: 40 CFR Chapter 60, SubChapter C, PT 60, SubPT NNN 60.665(a)

Description: Failure to demonstrate compliance with 40 CFR 60.665(a).

Date: 06/09/2006 (481222)

Self Report? NO Classification: Moderate

Citation: 40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.18(f)(4)
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.8(a)
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT NNN 60.662(b)

Description: The flowrate meter used during the reference method stack test conducted November 15, 2005 on flare 400 (EPN 400), did not meet method 2A calibration requirements.

F. Environmental audits.

Notice of Intent Date: 09/12/2003 (251337)

Disclosure Date: 11/12/2003

Viol. Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)

30 TAC Chapter 115, SubChapter D 115.354(3)

Description: failed to conduct required inspections and monitoring

Viol. Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115

Description: failed to update records on the annual production rate on Line 1200 on a monthly basis and the excess production rates calculated for May, August, and September 2003 are violations

Viol. Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115

Description: failed to update records on the annual production rate on Line 1300 on a monthly basis and the excess production rates calculated for July 2003 is a violation

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115

Description: Failed to install the continuous flow monitor and analyzer on the existing flare

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115

Description: Excess emissions

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115

Description: failed to conduct testing

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115

Description: failed to submit complete and accurate information and data regarding fugitive emissions on the annual emissions inventories for 1998, 1999, 2000, 2001, and 2002.

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
KURARAY AMERICA, INC.
RN100212216

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-0883-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 Kuraray America, Inc. ("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 chemical manufacturing plant at 11500 Bay Area Boulevard in Pasadena, Harris 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 May 28, 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 Twenty Thousand Two Hundred Dollars (\$20,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Thousand Eighty Dollars (\$8,080) of the administrative penalty and Four Thousand Forty Dollars (\$4,040) 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. Eight Thousand Eighty Dollars (\$8,080) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
 - a. Removed a source of volatile organic compounds ("VOCs") to the Acetic Acid Scrubber, which reduced VOC emissions from the scrubber from 9.36 pounds per hour ("lbs/hr") to 0.14 lbs/hr, as demonstrated during the March 11, 2008 stack test; and
 - b. Submitted a permit amendment application on May 15, 2008 requesting that the permitted limit for VOC emissions from the Acetic Acid Scrubber be raised from 0.08 lbs/hr to 0.17 lbs/hr.
 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 maintain emissions at or below the rates listed in the maximum allowable emission rate table ("MAERT") for the Acetic Acid Scrubber (emission point number 403), in violation of 30 TEX. ADMIN. CODE § 116.115(c), New Source Review Permit No. 9576, Special Condition 1 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on May 8, 2008. Specifically, the VOC emissions rate during stack tests conducted on February 8 and March 11, 2008 were 9.36 lbs/hr and 0.14 lbs/hr, respectively, but the MAERT limit was 0.08 lbs/hr.

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: Kuraray America, Inc., Docket No. 2008-0883-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eight Thousand Eighty Dollars (\$8,080) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit amendment application within 30 days after the date of such requests, or by any other deadline specified in writing;
 - b. Within 180 days after the effective date of this Agreed Order, submit written certification demonstrating compliance with the existing or amended VOC permit limit for the Acetic Acid Scrubber, or that operation has ceased until such time that appropriate authorization is obtained; and
 - c. The written certification required by Ordering Provision 3.b. shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.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:

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

4. 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.
5. 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.
6. 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.
7. 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.

8. 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.
9. 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

John Ordean
For the Executive Director

11/24/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

George Avdey
Signature

August 26, 2008
Date

GEORGE AVDEY
Name (Printed or typed)
Authorized Representative of
Kuraray America, Inc.

President
Title

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

Attachment A

Docket Number: 2008-0883-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Kuraray America, Inc.

Payable Penalty Amount: Sixteen Thousand One Hundred Sixty Dollars (\$16,160)

SEP Amount: Eight Thousand Eighty Dollars (\$8,080)

Type of SEP: Pre-approved

Third-Party Recipient: Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program

Location of SEP: Harris County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Harris County. The contribution will be used in accordance with the *Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality*.

SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

Kuraray America, Inc.
Agreed Order – Attachment A

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

