

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2008-1384-AIR-E **TCEQ ID:** RN100225226 **CASE NO.:** 36440  
**RESPONDENT NAME:** Trinity Industries, Inc.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Trinity Industries Plant 26, 2548 Northeast 28th Street, Fort Worth, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Rail car manufacturing plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 22, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. S. Theis Rice, V.P. &amp; Chief Legal Officer, Trinity Industries, Inc., P.O. Box 568887, Dallas, Texas 75356  Mr. David West, Regional Environmental Manager, Trinity Industries, Inc., P.O. Box 568887, Dallas, Texas 75356  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 14, 2008</p> <p><b>Date of NOE Relating to this Case:</b> August 21, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>1) Failure to maintain an exterior coating usage rate below the maximum permitted limit of 48,000 gallons per year. Specifically, the exterior coating usage rate for the period of July 1, 2006 through June 30, 2007 was 51,202 gallons [30 TEX. ADMIN. CODE § 116.115(c), Permit No. 8524, Special Condition No. 8, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to timely submit the required federal permit compliance certification for the period of May 21, 2007 through May 20, 2008 (due June 20, 2008) [30 TEX. ADMIN. CODE § 122.146(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$4,000</p> <p><b>Total Deferred:</b> \$800  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$3,200</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a) Began maintaining an exterior coating usage rate below the maximum permitted limit of 48,000 gallons per year, as documented by records reviewed during the investigation conducted on July 14, 2008; and</p> <p>b) Submitted the required federal permit compliance certification for the period of May 21, 2007 through May 20, 2008 on July 21, 2008.</p>

Additional ID No(s): Air Account No. TA0539N



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

<b>DATES</b>	Assigned	25-Aug-2008			
	PCW	26-Aug-2008	Screening	26-Aug-2008	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Trinity Industries, Inc.		
Reg. Ent. Ref. No.	RN100225226		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36440	No. of Violations	2
Docket No.	2008-1384-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	\$5,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5.0% Enhancement	<i>Subtotals 2, 3, &amp; 7</i>	\$250
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Notes: The Respondent was issued one NOV with the same/similar type of violations.

<b>Culpability</b>	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<i>Subtotal 5</i>	\$1,250
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<b>Economic Benefit</b>	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts \$102  
 Approx. Cost of Compliance \$1,500  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	\$4,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: [Empty box]

<i>Final Penalty Amount</i>	\$4,000
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	\$4,000
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<b>DEFERRAL</b>	20.0% Reduction	<i>Adjustment</i>	-\$800
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$3,200
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**Screening Date** 26-Aug-2008

**Docket No.** 2008-1384-AIR-E

**PCW**

**Respondent** Trinity Industries, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 36440

PCW Revision June 12, 2008

**Reg. Ent. Reference No.** RN100225226

**Media [Statute]** Air

**Enf. Coordinator** Jorge Ibarra, P.E.

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent was issued one NOV with the same/similar type of violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

**Screening Date** 26-Aug-2008 **Docket No.** 2008-1384-AIR-E **PCW**  
**Respondent** Trinity Industries, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 36440 *PCW Revision June 12, 2008*  
**Reg. Ent. Reference No.** RN100225226  
**Media [Statute]** Air  
**Enf. Coordinator** Jorge Ibarra, P.E.

**Violation Number**   
**Rule Cite(s)** 30 Tex. Admin. Code § 116.115(c), Permit No. 8524, Special Condition No. 8, and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to maintain an exterior coating usage rate below the maximum permitted limit of 48,000 gallons per year. Specifically, the exterior coating usage rate for the period of July 1, 2006 through June 30, 2007 was 51,202 gallons.  
**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="25%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

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

**Matrix Notes** Failure to maintain an exterior coating usage rate below the maximum permitted limit resulted in the release of insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

**Adjustment**

**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**   
 One annual event is recommended.

**Good Faith Efforts to Comply**  Reduction

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

**Notes** The Respondent achieved compliance on June 30, 2008 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:** Trinity Industries, Inc.  
**Case ID No.:** 36440  
**Reg. Ent. Reference No.:** RN100225226  
**Media:** Air  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**    **Date Required**    **Final Date**    **Yrs**    **Interest Saved**    **Onetime Costs**    **EB Amount**  
**Item Description:** 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	\$1,000	1-Jul-2006	30-Jun-2008	2.00	\$100	\$100
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain an exterior coating usage rate below the maximum permitted limit. Date Required is the first date of non-compliance. Final Date is the compliance date.

**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**

\$100

<b>Screening Date</b> 26-Aug-2008	<b>Docket No.</b> 2008-1384-AIR-E	<b>PCW</b>
<b>Respondent</b> Trinity Industries, Inc.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 36440		<i>PCW Revision June 12, 2008</i>
<b>Reg. Ent. Reference No.</b> RN100225226		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Jorge Ibarra, P.E.		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 122.146(2) and Tex. Health &amp; Safety Code § 382.085(b)"/>	
<b>Violation Description</b>	<input type="text" value="Failed to timely submit the required federal permit compliance certification for the period of May 21, 2007 through May 20, 2008 (due June 20, 2008)."/>	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
		<b>Major</b>	<b>Moderate</b>		<b>Minor</b>
	<b>Actual</b>	<input type="text"/>	<input type="text"/>		<input type="text"/>
<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
<b>Actual</b>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

**Number of Violation Events**  **Number of violation days**

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semi-annual	<input type="text"/>
	annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>	

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	<b>Before NOV</b>	<b>NOV to EDRP/Settlement Offer</b>
<b>Extraordinary</b>	<input type="text"/>	<input type="text"/>
<b>Ordinary</b>	<input checked="" type="checkbox"/>	<input type="text"/>
<b>N/A</b>	<input type="text" value="(mark with x)"/>	

**Notes**

**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:** Trinity Industries, Inc.  
**Case ID No.:** 36440  
**Reg. Ent. Reference No.:** RN100225226  
**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
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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				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)	\$500	20-Jun-2008	21-Jul-2008	0.08	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to timely submit the required permit compliance certification report. Date Required is the date the report was due, Final Date is the compliance date.

**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**

\$2

## Compliance History

Customer/Respondent/Owner-Operator:	CN600127807 Trinity Industries, Inc.	Classification: AVERAGE	Rating: 11.11
Regulated Entity:	RN100225226 TRINITY INDUSTRIES PLANT 26	Classification: AVERAGE	Site Rating: 0.50
ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	TA0539N
	AIR OPERATING PERMITS	PERMIT	1654
	AIR NEW SOURCE PERMITS	PERMIT	8524
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	TA0539N
	AIR NEW SOURCE PERMITS	AFS NUM	4843900318
	STORMWATER	PERMIT	TXR05K311
	STORMWATER	PERMIT	TXR05V006
Location:	2548 NE 28TH ST, FORT WORTH, TX, 76111		Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	August 26, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 26, 2003 to August 26, 2008		

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 10/02/2003 | (249598) |
| 2 | 04/23/2004 | (265635) |
| 3 | 04/19/2005 | (374581) |
| 4 | 02/24/2006 | (452477) |
| 5 | 07/03/2007 | (564056) |
| 6 | 10/23/2007 | (598881) |
| 7 | 08/21/2008 | (686323) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |          |                          |
|--------------|--|----------|--------------------------|
| Date:        | 02/24/2006   | (452477) |                          |
| Self Report? | YES  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 116, SubChapter B 116.115(c)<br>5C THC Chapter 382, SubChapter A 382.085(b) |          |                          |
| Rqmt Prov:   | PERMIT Special Condition #8  |          |                          |
| Description: | Usage limitation exceedance  |          |                          |
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TRINITY INDUSTRIES, INC.  
RN10025226**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-1384-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 Trinity Industries, 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 rail car manufacturing plant located at 2548 Northeast 28th Street in Fort Worth, Tarrant 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 August 26, 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 Dollars (\$4,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Two Hundred Dollars (\$3,200) of the administrative penalty and Eight Hundred Dollars (\$800) 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 has implemented the following corrective measures at the Plant:
  - a. Began maintaining an exterior coating usage rate below the maximum permitted limit of 48,000 gallons per year, as documented by records reviewed during the investigation conducted on July 14, 2008; and
  - b. Submitted the required federal permit compliance certification for the period of May 21, 2007 through May 20, 2008 on July 21, 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:

1. Failed to maintain an exterior coating usage rate below the maximum permitted limit of 48,000 gallons per year, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Permit No. 8524, Special Condition No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 14, 2008. Specifically, the exterior coating usage rate for the period of July 1, 2006 through June 30, 2007 was 51,202 gallons.
2. Failed to timely submit the required federal permit compliance certification for the period of May 21, 2007 through May 20, 2008 (due June 20, 2008), in violation of 30 TEX. ADMIN. CODE § 122.146(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 14, 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: Trinity Industries, Inc., Docket No. 2008-1384-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.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*Jole Soderin*  
For the Executive Director

12/8/08  
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.

*[Signature]*  
Signature

9.22.08  
Date

S. Theris Rice  
Name (Printed or typed)  
Authorized Representative of  
Trinity Industries, Inc.

V.P. & Chief Legal Officer  
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.

Handwritten text, possibly a title or header, mostly illegible due to blurriness.

Handwritten text, possibly a date or reference number.

Handwritten text, possibly a signature or name.

Handwritten text, possibly a signature or name.

Handwritten text, possibly a date or reference number.