

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2009-1042-AIR-E **TCEQ ID:** RN105334502 **CASE NO.:** 37908  
**RESPONDENT NAME:** Hayward Baker, 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> Hayward Baker MQ Power Generator, 3986 Charles Martin Hall Road, Rockdale, Milam County</p> <p><b>TYPE OF OPERATION:</b> Portable soil stabilization 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 October 19, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Audra Benoit, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8799; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Ruel E. Radford, Vice President, Hayward Baker, Inc., 2724 Prestige Road, Keller, Texas 76244  <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> June 4, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 30, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>Failure to obtain permit authorization. Specifically, a portable soil stabilization plant was relocated from Sabine Pass to Rockdale, constructed and in operation prior to receiving proper authorization [30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH &amp; SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p><b>Total Assessed:</b> \$750</p> <p><b>Total Deferred:</b> \$150  <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> \$600</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 type="checkbox"/> Yes <input checked="" 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 obtained Permit by Rule No. 82791L002, authorizing the Plant on June 8, 2009.</p>

Additional ID No(s): 82791L002



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	7-Jul-2009	Screening	7-Jul-2009	EPA Due	
	PCW	8-Jul-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Hayward Baker, Inc.		
Reg. Ent. Ref. No.	RN105334502		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37908	No. of Violations	1
Docket No.	2009-1042-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Audra Benoit
		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**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

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

**Economic Benefit**  Enhancement\* **Subtotal 6**

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

**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

**PAYABLE PENALTY**

**Screening Date** 7-Jul-2009

**Docket No.** 2009-1042-AIR-E

**PCW**

**Respondent** Hayward Baker, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 37908

PCW Revision October 30, 2009

**Reg. Ent. Reference No.** RN105334502

**Media [Statute]** Air

**Enf. Coordinator** Audra Benoit

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	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)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
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)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

No change due to average performer classification.

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

<b>Screening Date</b> 7-Jul-2009	<b>Docket No.</b> 2009-1042-AIR-E	<b>PCW</b>
<b>Respondent</b> Hayward Baker, Inc.	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 37908	<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN105334502		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Audra Benolt		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 116.110(a)(1) and Tex. Health &amp; Safety Code §§ 382.0518(a) and 382.085(b)"/>	
<b>Violation Description</b>	<input type="text" value="Failed to obtain permit authorization. Specifically, a portable soil stabilization plant was relocated from Sabine Pass to Rockdale, constructed and operated prior to receiving proper authorization."/>	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
<b>OR</b>	<b>Harm</b>	
	Release    Major    Moderate    Minor	
	Actual <input type="text"/>	<input type="text" value="0%"/>
	Potential <input type="text"/>	
<b>&gt;&gt; Programmatic Matrix</b>		
	Falsification    Major    Moderate    Minor	
	<input type="text" value="x"/>	<input type="text" value="10%"/>
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>	
<b>Adjustment</b>		<input type="text" value="\$9,000"/>
		<input type="text" value="\$1,000"/>
<b>Violation Events</b>		
Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="35"/> Number of violation days
<small>mark only one with an x</small>	daily <input type="text"/>	
	weekly <input type="text"/>	
	monthly <input type="text"/>	
	quarterly <input checked="" type="checkbox"/>	
	semiannual <input type="text"/>	
	annual <input type="text"/>	
	single event <input type="text"/>	
<b>Violation Base Penalty</b>		<input type="text" value="\$1,000"/>
<input type="text" value="One quarterly event is recommended based on the relocation date of May 4, 2009, to the authorization date of June 8, 2009."/>		
<b>Good Faith Efforts to Comply</b>	<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$250"/>
	<small>Before NOV    NOV to EDFRP/Settlement Offer</small>	
Extraordinary <input type="text"/>	<input type="text"/>	
Ordinary <input checked="" type="checkbox"/>	<input type="text"/>	
N/A <input type="text"/>	<small>(mark with x)</small>	
<b>Notes</b>	<input type="text" value="The Respondent received authorization on June 8, 2009, prior to the June 30, 2009 NOE."/>	
<b>Violation Subtotal</b>		<input type="text" value="\$750"/>
<b>Economic Benefit (EB) for this violation</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$7"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$750"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$750"/>

## Economic Benefit Worksheet

**Respondent** Hayward Baker, Inc.  
**Case ID No.** 37908  
**Reg. Ent. Reference No.** RN105334502  
**Media** Air  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$1,500	4-May-2009	8-Jun-2009	0.10	\$7	n/a	\$7
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated costs to obtain a permit. The date required is the relocation date of the plant. The final date is the date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
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 \$1,500 TOTAL \$7

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601295488 Hayward Baker, Inc. Classification: AVERAGE Rating: 12.70  
Regulated Entity: RN105334502 HAYWARD BAKER MQ POWER GENERATOR Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT

ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 82791L002  
AIR NEW SOURCE PERMITS REGISTRATION 82791L001  
Location: 3986 CHARLES MARTIN HALL RD, ROCKDALE, MILAM COUNTY, TX

TCEQ Region: REGION 9 - WACO

Date Compliance History Prepared: July 07, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 07, 2004 to July 07, 2009

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

Name: Audra Benoit Phone: (409) 899-8799

## 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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

## 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 06/30/2009 (749394)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- 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  
HAYWARD BAKER, INC.  
RNI05334502

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1042-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 Hayward Baker, 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 portable soil stabilization plant at 3986 Charles Martin Hall Road, in Rockdale, Milam 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 July 5, 2009.
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 Fifty Dollars (\$750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Dollars (\$600) of the administrative penalty and One Hundred Fifty Dollars (\$150) 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 obtained Permit by Rule No. 82791L002, authorizing the Plant on June 8, 2009.
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 obtain permit authorization, in violation of 30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on June 4, 2009. Specifically, a portable soil stabilization plant was relocated from Sabine Pass to Rockdale, constructed and in operation prior to receiving proper authorization.

## 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: Hayward Baker, Inc., Docket No. 2009-1042-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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
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

*John Ordier*  
For the Executive Director

9/18/09  
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

8-6-09  
Date

RUEL E. RADFORD  
Name (Printed or typed)  
Authorized Representative of  
Hayward Baker, Inc.

VICE 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.