

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 3  
**DOCKET NO.:** 2009-0374-AIR-E **TCEQ ID:** RN100225671 **CASE NO.:** 37315  
**RESPONDENT NAME:** 850 Pine Street 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> Island Park Fabrication Plant, 850 Pine Street, Beaumont, Jefferson County</p> <p><b>TYPE OF OPERATION:</b> Metal fabrication facility</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 September 7, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732  TCEQ Enforcement Coordinator: 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  Respondent: Mr. Mike Randall, HSE Manager, 850 Pine Street Inc., 850 Pine Street, Beaumont, Texas 77701  Mr. Dustin L. Schwartz, Vice President Operations, 850 Pine Street Inc., 850 Pine Street, Beaumont, Texas 77701  Respondent's Attorney: 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> January 29, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> March 11, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>1) Failure to submit the monthly gasoline throughput on an annual basis for calendar year 2007 no later than January 31, 2008, to maintain exempt status from the Stage II requirements [30 TEX. ADMIN. CODE §§ 115.247(2) and 122.143(4), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), and Federal Operating Permit ("FOP") O-01657, General Terms and Conditions ("GTC") and Special Condition ("SC") 5A].</p> <p>2) Failure to properly label all permitted sources. Specifically, the Blast Hawg, Emission Point Number ("EPN") AB-3 was not marked, tagged, or engraved as specified in the plot plan and maximum allowable emission rate table ("MAERT") of Air Permit No. 56685 since being installed May 17, 2007 [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), FOP O-01657, GTC and SC 6A, and Air Permit No. 56685, SC 3].</p> <p>3) Failure to report deviations. Specifically, semi-annual deviation reports for the periods ending November 3, 2007 and November 3, 2008, did not include all instances of deviations [30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(A), (2)(B), and (2)(C), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), and FOP O-01657, GTC].</p>	<p><b>Total Assessed:</b> \$9,575</p> <p><b>Total Deferred:</b> \$1,915  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$3,830</p> <p><b>Total Paid to General Revenue:</b> \$3,830</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input 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. On January 16, 2009, submitted the total gallons of gasoline purchased during 2007 and 2008 to demonstrate eligibility for exempt status from Stage II requirements; and</p> <p>b. On January 29, 2009, labeled the Blast Hawg, EPN AB-3, by marking as specified in the plot plan and MAERT of Air Permit No. 56685.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Begin maintaining records of monthly gasoline throughputs in order to comply with reporting requirements; and</p> <p>ii. Report all missing deviations in the next Title V reports due and implement measures designed to ensure timely and complete submittal of reports.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

<p>4) Failure to timely submit annual compliance certification ("ACC") and deviation reports and include all deviations. Specifically, the ACC for the period ending November 3, 2008, was due December 3, 2008, but was not received until December 19, 2008, and did not include all instances of deviations. The semi-annual deviation report for the period ending May 3, 2008 was not submitted [30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(A), (2)(B), and (2)(C), 122.146(1), (2), (5)(C)(i), (5)(C)(ii), (5)(C)(iii), (5)(C)(iv) and (5)(C)(v), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), and FOP O-01657, GTC and SC 8].</p>		
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Additional ID No(s): JE0016C



**Attachment A**  
**Docket Number: 2009-0374-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** 850 Pine Street Inc.

**Payable Penalty Amount:** Seven Thousand Six Hundred Sixty Dollars (\$7,660)

**SEP Amount:** Three Thousand Eight Hundred Thirty Dollars (\$3,830)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Clean School Buses

**Location of SEP:** Texas Air Quality Control Region 106 – Southern Louisiana-Southeast Texas

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 shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to aid local school districts, area transit agencies, and local governments in need of funding assistance to pay for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. The funds will be disbursed on a needs-rated basis, using non-attainment area status, condition of buses, and economic status of the recipient as possible rating factors if competition for the funds exists. To maximize funds, retrofitting will take priority over replacement of buses. Older buses deemed not suitable for retrofitting will be permanently retired and sold only for scrap.

Acceptable retrofit technologies include particulate matter traps, diesel particulate matter filters, nitrogen oxides (NO<sub>x</sub>) reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by the United States Environmental Protection Agency ("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.



**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by reducing particulate matter and hydrocarbon emissions from buses, to meet the new, more stringent emissions standards introduced by the EPA which will be phased in between 2007 and 2010.

**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:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive, Suite 510  
Bryan, Texas 77802-2700

**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.



850 Pine Street Inc.  
Agreed Order - Attachment A

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.





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	16-Mar-2009	<b>Screening</b>	17-Mar-2009	<b>EPA Due</b>	
	<b>PCW</b>	18-Mar-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	850 Pine Street Inc.
<b>Reg. Ent. Ref. No.</b>	RN100225671
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	37315	<b>No. of Violations</b>	4
<b>Docket No.</b>	2009-0374-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Audra Benoit
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$10,200
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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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No change due to average performer classification.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$625
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$205  
 Approx. Cost of Compliance: \$2,100  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$9,575
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$9,575

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$9,575
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$1,915
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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>	\$7,660
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<b>Screening Date</b> 17-Mar-2009	<b>Docket No.</b> 2009-0374-AIR-E	<b>PCW</b>
<b>Respondent</b> 850 Pine Street Inc.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 37315		<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b> RN100225671		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Audra Benoit		

### 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>	0	0%
	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)** 0%

**>> 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**

No change due to average performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

**Screening Date** 17-Mar-2009 **Docket No.** 2009-0374-AIR-E **PCW**  
**Respondent** 850 Pine Street Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 37315 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN100225671  
**Media [Statute]** Air  
**Enf. Coordinator** Audra Benoit

**Violation Number**   
**Rule Cite(s)** 30 Tex. Admin. Code §§ 115.247(2) and 122.143(4), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit ("FOP") O-01657, General Terms and Conditions ("GTC") and Special Condition ("SC") 5A  
**Violation Description** Failed to submit the monthly gasoline throughput on an annual basis for calendar year 2007 no later than January 31, 2008, to maintain exempt status from the Stage II requirements.

**Base Penalty**

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

OR

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

**>> Programmatic Matrix**

Falsification	Harm			Percent
	Major	Moderate	Minor	
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

mark only one with an x

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

**Violation Base Penalty**

One single event is recommended for the one report not submitted.

**Good Faith Efforts to Comply**  Reduction  **Before NOV** **NOV to EDRP/Settlement Offer**

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="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** 850 Pine Street Inc.  
**Case ID No.** 37315  
**Reg. Ent. Reference No.** RN100225671  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	31-Jan-2008	29-Oct-2009	1.75	\$44	n/a	\$44
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)	\$100	15-Jan-2009	16-Jan-2009	0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated cost (\$500) to implement a record keeping system for gasoline throughput. The date required is the date the annual reporting was due. The final date is the estimated date of compliance. Estimated cost (\$100) to compile and submit total amount of gasoline purchased in 2007 and 2008. The date required is the date of request for the information. The final date is the date it was submitted.

### 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 \$600

**TOTAL** \$44

<b>Screening Date</b> 17-Mar-2009	<b>Docket No.</b> 2009-0374-AIR-E	<b>PCW</b>
<b>Respondent</b> 850 Pine Street Inc.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 37315	<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN100225671		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Audra Benoit		
<b>Violation Number</b> 2		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Tex. Health & Safety Code § 382.085(b), FOP O-01657, GTC and SC 6A, and Air Permit No. 56685, SC 3	
<b>Violation Description</b>	Failed to properly label all permitted sources. Specifically, the Blast Hawg, Emission Point Number ("EPN") AB-3 was not marked, tagged, or engraved as specified in the plot plan and maximum allowable emission rate table ("MAERT") of Air Permit No. 56685 since being installed May 17, 2007.	
<b>Base Penalty</b>		\$10,000

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

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

**>> Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**\$2,500**

**Violation Events**

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

<i>mark only one with an x</i>	daily	<input type="checkbox"/>
	weekly	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	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="checkbox"/>	<input type="checkbox"/>
<b>Ordinary</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>N/A</b>	<input type="checkbox"/>	<input type="checkbox"/> (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:** 850 Pine Street Inc.  
**Case ID No.:** 37315  
**Reg. Ent. Reference No.:** RN100225671  
**Media:** Air  
**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$500	17-May-2007	29-Jan-2009	1.71	\$3	\$57	\$60
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to ensure the labeling of permitted sources according to the plot plan and the MAERT. The date required is the installation date. The final date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$60

**Screening Date** 17-Mar-2009 **Docket No.** 2009-0374-AIR-E **PCW**

**Respondent** 850 Pine Street Inc. *Policy Revision 2 (September 2002)*

**Case ID No.** 37315 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN100225671

**Media [Statute]** Air

**Enf. Coordinator** Audra Benoit

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code §§ 122.143(4), 122.145(2)(A), (2)(B), and (2)(C), Tex. Health & Safety Code § 382.085(b), and FOP O-01657, GTC

**Violation Description** Failed to report deviations. Specifically, semi-annual deviation reports for the periods ending November 3, 2007 and November 3, 2008, did not include all instances of deviations.

**Base Penalty** \$10,000

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

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

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	X	

**Matrix Notes** At least 70% of the rule requirement was met.

**Adjustment** \$9,900

\$100

**Violation Events**

**Number of Violation Events** 2 **Number of violation days** 470

*mark only one with an x*

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

**Violation Base Penalty** \$200

Two single events are recommended for the two reports with missing deviations.

**Good Faith Efforts to Comply** 0.0% Reduction **\$0**

	Before NOV	NOV to EDRP/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** \$200

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

**Estimated EB Amount** \$67 **Violation Final Penalty Total** \$200

**This violation Final Assessed Penalty (adjusted for limits)** \$200

## Economic Benefit Worksheet

**Respondent** 850 Pine Street Inc.  
**Case ID No.** 37315  
**Reg. Ent. Reference No.** RN100225671  
**Media** Air  
**Violation No.** 3

<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
No commas or \$							

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$500	3-Dec-2007	29-Oct-2009	1.91	\$3	\$64	\$67
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to implement self audit procedures to identify all deviations. The date required is the date the first missing deviation was due to be reported. The final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**

\$67

<b>Screening Date</b> 17-Mar-2009	<b>Docket No.</b> 2009-0374-AIR-E	<b>PCW</b>		
<b>Respondent</b> 850 Pine Street Inc.		<small>Policy Revision 2 (September 2002)</small>		
<b>Case ID No.</b> 37315		<small>PCW Revision October 30, 2008</small>		
<b>Reg. Ent. Reference No.</b> RN100225671				
<b>Media [Statute]</b> Air				
<b>Enf. Coordinator</b> Audra Benoit				
<b>Violation Number</b>	4			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 122.143(4), 122.145(2)(A), (2)(B) and (2)(C), 122.146(1), (2), (5)(C)(i), (5)(C)(ii), (5)(C)(iii), (5)(C)(iv) and (5)(C)(v), Tex. Health & Safety Code § 382.085(b), and FOP O-01657, GTC and SC 8			
<b>Violation Description</b>	Failed to timely submit annual compliance certification ("ACC") and deviation reports and include all deviations. Specifically, the ACC for the period ending November 3, 2008, was due December 3, 2008 but was not received until December 19, 2008. The semi-annual deviation report for the period ending May 3, 2008 was not submitted.			
	<b>Base Penalty</b>	\$10,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Release</b>	<b>Harm</b>		
		Major    Moderate    Minor		
	Actual			
	Potential			
		<b>Percent</b>	0%	
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
		x		
				<b>Percent</b>
				25%
<b>Matrix Notes</b>	100% of the rule requirement was not met.			
	<b>Adjustment</b>		\$7,500	
				\$2,500
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	2	<b>Number of violation days</b>	288
<small>mark only one with an x</small>	daily			
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event		x	
			<b>Violation Base Penalty</b>	\$5,000
Two single events are recommended for the two reports not timely submitted.				
<b>Good Faith Efforts to Comply</b>				
	<b>0.0% Reduction</b>			\$0
		<b>Before NOV</b>	<b>NOV to EDRP/Settlement Offer</b>	
Extraordinary				
Ordinary				
N/A	x		(mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
			<b>Violation Subtotal</b>	\$5,000
<b>Economic Benefit (EB) for this violation</b>				
	<b>Estimated EB Amount</b>	\$35	<b>Violation Final Penalty Total</b>	\$5,000
			<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$5,000

## Economic Benefit Worksheet

**Respondent:** 850 Pine Street Inc.  
**Case ID No.:** 37315  
**Reg. Ent. Reference No.:** RN100225671  
**Media:** Air  
**Violation No.:** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	2-Jun-2008	28-Oct-2009	1.41	\$35	n/a	\$35
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost of implementing measures to ensure timely submittal of Title V reports. The date required is the due date of the first report. The final date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance

\$500

**TOTAL**

\$35

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603062266 850 Pine Street Inc. Classification: AVERAGE Rating: 1.50  
Regulated Entity: RN100225671 ISLAND PARK FABRICATION PLANT Classification: HIGH Site Rating: 0.00

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	JE0016C
	AIR OPERATING PERMITS	PERMIT	1657
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	54917
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD008090227
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31297
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JE0016C
	AIR NEW SOURCE PERMITS	AFS NUM	4824500030
	AIR NEW SOURCE PERMITS	PERMIT	56685
	VOLUNTARY CLEANUP PROGRAM	ID NUMBER	1942

Location: 850 PINE ST, BEAUMONT, TX, 77701 Rating Date: 9/1/2008 Repeat Violator: NO

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: March 16, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 16, 2004 to March 16, 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 of the site during the compliance period? Yes
3. If Yes, who is the current owner? 850 Pine Street, Inc.  
Trinity Marine
4. If Yes, who was/were the prior owner(s)? Trinity Industries, Inc.  
N/A  
N/A
5. When did the change(s) in ownership occur? 07/17/2006

## 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 03/31/2005 (349672)
  - 2 02/24/2006 (450971)

3 11/29/2006 (519534)  
4 12/21/2007 (612099)  
5 03/11/2009 (710014)

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  
850 PINE STREET INC.  
RN100225671

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-0374-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 850 Pine Street 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 metal fabrication facility at 850 Pine Street in Beaumont, Jefferson 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 March 16, 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 Nine Thousand Five Hundred Seventy-Five Dollars (\$9,575) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Eight Hundred Thirty Dollars (\$3,830) of the administrative penalty and One Thousand Nine Hundred Fifteen Dollars (\$1,915)

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. Three Thousand Eight Hundred Thirty Dollars (\$3,830) 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. On January 16, 2009, submitted the total gallons of gasoline purchased during 2007 and 2008 to demonstrate eligibility for exempt status from Stage II requirements; and
  - b. On January 29, 2009, labeled the Blast Hawg, Emission Point Number ("EPN") AB-3, by marking as specified in the plot plan and maximum allowable emission rate table ("MAERT") of Air Permit No. 56685.
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 submit the monthly gasoline throughput on an annual basis for calendar year 2007 no later than January 31, 2008, to maintain exempt status from the Stage II requirements, in violation of 30 TEX. ADMIN. CODE §§ 115.247(2) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit ("FOP") O-01657, General Terms and Conditions ("GTC") and Special Condition ("SC") 5A, as documented during an investigation conducted on January 29, 2009.

2. Failed to properly label all permitted sources, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), FOP O-01657, GTC and SC 6A, and Air Permit No. 56685, SC 3. Specifically, the Blast Hawg, Emission Point Number ("EPN") AB-3 was not marked, tagged, or engraved as specified in the plot plan and maximum allowable emission rate table ("MAERT") of Air Permit No. 56685 since being installed May 17, 2007, as documented during an investigation conducted on January 29, 2009.
3. Failed to report deviations, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(A), (2)(B), and (2)(C), TEX. HEALTH & SAFETY CODE § 382.085(b), and FOP O-01657, GTC. Specifically, semi-annual deviation reports for the periods ending November 3, 2007 and November 3, 2008, did not include all instances of deviations, as documented during an investigation conducted on January 29, 2009.
4. Failed to timely submit annual compliance certification ("ACC") and deviation reports and include all deviations, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(A), (2)(B), and (2)(C), 122.146(1), (2), (5)(C)(i), (5)(C)(ii), (5)(C)(iii), (5)(C)(iv) and (5)(C)(v), TEX. HEALTH & SAFETY CODE § 382.085(b), and FOP O-01657, GTC and SC 8. Specifically, the ACC for the period ending November 3, 2008, was due December 3, 2008, but was not received until December 19, 2008, and did not include all instances of deviations. The semi-annual deviation report for the period ending May 3, 2008 was not submitted, as documented during an investigation conducted on January 29, 2009.

### 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: 850 Pine Street Inc., Docket No. 2009-0374-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, Three Thousand Eight Hundred Thirty Dollars (\$3,830) 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. Within 30 days after the date of this Agreed Order:

- i. Begin maintaining records of monthly gasoline throughputs in order to comply with reporting requirements, in accordance with 30 TEX. ADMIN. CODE § 115.247(2); and
- ii. Report all missing deviations in the next Title V reports due and implement measures designed to ensure timely and complete submittal of reports, in accordance with 30 TEX. ADMIN. CODE §§ 122.145 and 122.146.

b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines 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  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

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 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.
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 S. Sellen  
\_\_\_\_\_  
For the Executive Director

9/1/2009  
\_\_\_\_\_  
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.

Dustin L. Schwartz  
\_\_\_\_\_  
Signature

June 24, 2009  
\_\_\_\_\_  
Date

Dustin L. Schwartz  
Name (Printed or typed)  
Authorized Representative of  
850 Pine Street Inc.

VP Ops I.D.  
\_\_\_\_\_  
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.

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>850 Pine Street Inc.</b>
<b>Payable Penalty Amount:</b>	<b>Seven Thousand Six Hundred Sixty Dollars (\$7,660)</b>
<b>SEP Amount:</b>	<b>Three Thousand Eight Hundred Thirty Dollars (\$3,830)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")- Clean School Buses</b>
<b>Location of SEP:</b>	<b>Texas Air Quality Control Region 106 – Southern Louisiana-Southeast Texas</b>

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 shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to aid local school districts, area transit agencies, and local governments in need of funding assistance to pay for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. The funds will be disbursed on a needs-rated basis, using non-attainment area status, condition of buses, and economic status of the recipient as possible rating factors if competition for the funds exists. To maximize funds, retrofitting will take priority over replacement of buses. Older buses deemed not suitable for retrofitting will be permanently retired and sold only for scrap.

Acceptable retrofit technologies include particulate matter traps, diesel particulate matter filters, nitrogen oxides (NO<sub>x</sub>) reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by the United States Environmental Protection Agency ("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.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate matter and hydrocarbon emissions from buses, to meet the new, more stringent emissions standards introduced by the EPA which will be phased in between 2007 and 2010.

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:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive, Suite 510  
Bryan, Texas 77802-2700

**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.

850 Pine Street Inc.  
Agreed Order - Attachment A

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.

