

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-1442-IWD-E **TCEQ ID:** RN102076601 **CASE NO.:** 36490
RESPONDENT NAME: Altivia Corporation

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input 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 checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Haden Road Complex, 1632 Haden Road between Haden Road and Greens Bayou, approximately 0.5 mile south of Interstate Highway 10, Harris County</p> <p>TYPE OF OPERATION: Chemical manufacturing plant</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 26, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. J. Michael Jusbasche, Director and CEO, Altivia Corporation, 1100 Louisiana, Suite 3160, Houston, Texas 77002 Mr. Louis G. Huey, Chief Operating Officer, Altivia Corporation, 1100 Louisiana, Suite 3160, Houston, Texas 77002 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 24, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 21, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 03944 and is continuing to discharge wastewater from the Facility without authorization [30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2) and TEX. WATER CODE § 26.121(a)(1)].</p>	<p>Total Assessed: \$5,250</p> <p>Total Deferred: \$1,050 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$4,200</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 330 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 03944;</p> <p>b. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application;</p> <p>c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;</p> <p>d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions a and b, in accordance with Ordering Provision f, below;</p> <p>e. Within 330 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision 2, f, below;</p> <p>f. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a, b, and e.</p>

Additional ID No(s): WQ0003944000, TX0116076



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	25-Aug-2008	Screening	8-Sep-2008	EPA Due	
	PCW	15-Sep-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Altivia Corporation
Reg. Ent. Ref. No.	RN102076601
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36490	No. of Violations	1
Docket No.	2008-1442-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$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.

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$250
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Notes: An enhancement is recommended due to five non-similar NOVs and a reduction is recommended due to one notice of intent to conduct a self audit and one disclosure of violations under the Self Audit Act.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1,019
 Approx. Cost of Compliance: \$11,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$5,250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,250
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,050
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$4,200
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Screening Date 8-Sep-2008

Docket No. 2008-1442-IWD-E

PGW

Respondent Altivia Corporation

Policy Revision 2 (September 2002)

Case ID No. 36490

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102076601

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	1	-2%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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

An enhancement is recommended due to five non-similar NOVs and a reduction is recommended due to one notice of intent to conduct a self audit and one disclosure of violations under the Self Audit Act.

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

Screening Date 8-Sep-2008	Docket No. 2008-1442-IWD-E	PCW				
Respondent Altivia Corporation	<small>Policy Revision 2 (September 2002)</small>					
Case ID No. 36490	<small>PCW Revision June 12, 2008</small>					
Reg. Ent. Reference No. RN102076601						
Media [Statute] Water Quality						
Enf. Coordinator Lanae Foard						
Violation Number <input type="text" value="1"/>						
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code §§ 305.65 and 305.125(2) and Tex. Water Code § 26.121(a)(1)"/>					
Violation Description	<input 03944="" and="" authorization."="" continuing="" discharge="" facility="" from="" is="" no.="" permit="" the="" to="" tpdes")="" type="text" value="Failed to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System (" wastewater="" without=""/>					
Base Penalty	<input type="text" value="\$10,000"/>					
>> Environmental, Property and Human Health Matrix						
OR	Release	Harm				
		Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
>> Programmatic Matrix						
	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>		
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>					
Adjustment	<input type="text" value="\$9,000"/>					
<input type="text" value="\$1,000"/>						
Violation Events						
	Number of Violation Events	<input type="text" value="5"/>	<input type="text" value="130"/>	Number of violation days		
<small>mark only one with an x</small>	daily	<input type="text"/>	<input type="text"/>	Violation Base Penalty	<input type="text" value="\$5,000"/>	
	monthly	<input type="text" value="x"/>	<input type="text"/>			
	quarterly	<input type="text"/>	<input type="text"/>			
	semiannual	<input type="text"/>	<input type="text"/>			
	annual	<input type="text"/>	<input type="text"/>			
	single event	<input type="text"/>	<input type="text"/>			
<input type="text" value="Five monthly events are recommended from the permit expiration date (May 1, 2008) to the screening date (September 8, 2008)."/>						
Good Faith Efforts to Comply						
	0.0% Reduction				<input type="text" value="\$0"/>	
		<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>			
Extraordinary	<input type="text"/>	<input type="text"/>				
Ordinary	<input type="text"/>	<input type="text"/>				
N/A	x	<small>(mark with x)</small>				
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>					
Violation Subtotal	<input type="text" value="\$5,000"/>					
Economic Benefit (EB) for this violation						
Statutory Limit Test						
Estimated EB Amount	<input type="text" value="\$1,019"/>				Violation Final Penalty Total	<input type="text" value="\$5,250"/>
This violation Final Assessed Penalty (adjusted for limits)						<input type="text" value="\$5,250"/>

Economic Benefit Worksheet

Respondent: Altivia Corporation
Case ID No.: 36490
Reg. Ent. Reference No.: RN102076601
Media: Water Quality
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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$11,500	1-May-2008	7-Feb-2010	1.77	\$1,019	n/a	\$1,019
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a new permit application to obtain authorization to discharge wastewater. Date required is the permit expiration date. Final date is the expected 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

\$11,500

TOTAL

\$1,019

Compliance History

Customer/Respondent/Owner-Operator: CN601121254 Altivia Corporation Classification: AVERAGE Rating: 0.42
 Regulated Entity: RN102076601 HADEN ROAD COMPLEX Classification: AVERAGE Site Rating: 0.42
 ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # 31956
 GENERATION (SWR)
 INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXD000607457
 GENERATION
 WASTEWATER PERMIT WQ0003944000
 WASTEWATER PERMIT TPDES0116076
 WASTEWATER PERMIT TX0116076
 AIR NEW SOURCE PERMITS PERMIT 32801
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER HG1583A
 AIR NEW SOURCE PERMITS REGISTRATION 74271
 AIR NEW SOURCE PERMITS REGISTRATION 50872

Location: 1632 HADEN ROAD BETWEEN HADEN ROAD AND Rating Date: 9/1/2008 Repeat Violator: NO
 GREENS BAYOU APPROXIMATELY 0.5 MILE SOUTH OF
 INTERSTATE HIGHWAY 10, HARRIS COUNTY, TX.

TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: September 08, 2008
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: September 08, 2003 to September 08, 2008

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

Name: Lanae Foard Phone: 512-239-2554

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 08/21/2008 (699676)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 12/31/2003 (325470)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 - Date: 01/31/2004 (325460)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 - Date: 05/02/2006 (456604)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to measure, document, and report the flow at Outfall 002.
 - Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 319, SubChapter A 319.6
 30 TAC Chapter 319, SubChapter A 319.9(c)
 Description: Failure to perform the required quality control analyses.
 - Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
 Description: Failure to report the correct value for Oil and Grease (O&G) on the Discharge
 Monitoring Reports (DMRs).
 - Self Report? NO Classification: Moderate

Citation:	30 TAC Chapter 319, SubChapter A 319.5(b)		
Description:	Failure to collect effluent samples at the frequency specified in the permit.		
Date:	01/11/2008 (613900)		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.11(a) 30 TAC Chapter 319, SubChapter A 319.11(b)		
Description:	Failure to collect the oil & grease samples, as required.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.5(b)		
Rqmt Prov:	PERMIT TPDES Permit No. 03944-000		
Description:	Failure to collect grab samples and conduct the oil & grease and chemical oxygen demand (COD) analyses, at the required frequency in 11/06, 01/07, and 02/07.		
Self Report?	NO	Classification	Moderate
Rqmt Prov:	PERMIT 03944-000		
Description:	Failure to inspect the outfalls daily in order to document that there is no discharge.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.7(c)		
Rqmt Prov:	PERMIT TPDES Permit No. 03944-000		
Description:	Failure to accurately report oil & grease on the discharge monitoring reports (DMRs) and failure to maintain copies of the 07/07 through 10/07 DMRs, as required.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT 03944-000		
Description:	Failure to comply with Other Requirement No. 4 in TPDES Permit No. 03944-000.		

F. Environmental audits.

Notice of Intent Date:	10/27/2003 (263044)
Disclosure Date:	05/03/2004
Viol. Classification:	Major
Citation:	30 TAC Chapter 116, SubChapter B 116.110
Description:	Operating air emission sources without appropriate authorization.
Viol. Classification:	Moderate
Rqmt Prov:	PERMIT NSR Permit 32801
Description:	Failure to continuously monitor the pH of cooling tower and heat exchanger water.

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
ALTIVIA CORPORATION
RN102076601**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-1442-IWD-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 Altivia Corporation ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a chemical manufacturing plant with a wastewater treatment system located at 1632 Haden Road between Haden Road and Greens Bayou approximately 0.5 mile south of Interstate Highway 10 in Harris County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 Five Thousand Two Hundred Fifty Dollars (\$5,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Two Hundred Dollars (\$4,200) of the administrative

penalty and One Thousand Fifty Dollars (\$1,050) 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 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.
10. 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.
11. 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 Facility, the Respondent is alleged to have failed to maintain authorization for the discharge of wastewater, in violation of 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2) and TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on June 24, 2008. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 03944 and is continuing to discharge wastewater from the Facility without 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: Altivia Corporation, Docket No. 2008-1442-IWD-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. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 330 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 03944;
- b. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Application Review and Processing Team
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
- d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a. and 2.b, in accordance with Ordering Provision No. 2.f, below;
- e. Within 330 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision No. 2.f, below;
- f. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a, 2.b, and 2.e. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

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

3. 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 Facility operations referenced in this Agreed Order.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. ...
For the Executive Director

Date 1/22/2009

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.

Louis G. Huey
Signature

Date Nov. 16, 2008

LOUIS G. HUEY, COO
Name (Printed or typed)
Authorized Representative of
Altivia Corporation

Title Chief Operating Officer

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.

