

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1519-AIR-E TCEQ ID: RN100819242 CASE NO.: 36559**  
**RESPONDENT NAME: Johnson Plate and Tower Fabrication, 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> Johnson Plate &amp; Tower Fabrication, 201 Los Mochis Drive, Canutillo, El Paso County</p> <p><b>TYPE OF OPERATION:</b> Steel tubular tower manufacturing plant for wind turbines</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input 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 February 2, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney/SEP Coordinator: None  TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  Respondent: Mr. David Nichelini, Facilities Engineer, Johnson Plate and Tower Fabrication, Inc., P.O. Box 12909, El Paso, Texas 79913  Mr. Douglas Johnson, President, Johnson Plate and Tower Fabrication, Inc., P. O. Box 12909; El Paso, Texas 79913  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> May 8, 2008</p> <p><b>Date of NOE Relating to this Case:</b> June 26, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>1) Failure to comply with the Permit-by-Rule (Registration No. 36522) for surface coating by allowing more than six pounds per hour ("lbs/hr") of volatile organic compounds ("VOCs") emissions, averaged over any five-hour period, and 500 pounds per week being emitted at any time. Specifically, the Plant emitted 135,939 pounds of VOCs for an average of 21.78 lbs/hr during the year 2007 [30 TEX. ADMIN. CODE § 106.433(7)(A), 40 CODE OF FEDERAL REGULATIONS § 63.3890(b)(1), and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to obtain authorization prior to conducting surface coating activities. Specifically, the Respondent was operating surface coating operations without a permit [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH &amp; SAFETY CODE §§ 382.085(b) and 382.0518(a)].</p>	<p><b>Total Assessed:</b> \$12,250</p> <p><b>Total Deferred:</b> \$2,450  <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> \$9,800</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>1) The Executive Director recognizes that the Respondent was issued a New Source Review ("NSR") Permit on October 5, 2008.</p> <p><b>Ordering Provisions:</b></p> <p>2) Within 30 days after the effective date of this Agreed Order, submit written certification that the Plant is in compliance with the VOC permitted limits of the NSR Permit No. 85275. The certification shall include supporting documentation to demonstrate compliance, and shall be notarized by a State of Texas Notary Public.</p>

Additional ID No(s): Air New Source Review Permit 85275



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

**TCEQ**

<b>DATES</b>	Assigned	25-Aug-2008			
	PCW	18-Sep-2008	Screening	15-Sep-2008	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Johnson Plate and Tower Fabrication, Inc.
Reg. Ent. Ref. No.	RN100819242
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36559	No. of Violations	2
Docket No.	2008-1519-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	J. Craig Fleming
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	<b>\$15,000</b>
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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	<i>Subtotals 2, 3, &amp; 7</i>	<b>\$0</b>
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Notes: No enhancement is recommended to the administrative penalty because of the Average Performer classification.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<i>Subtotal 5</i>	<b>\$500</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<i>Subtotal 6</i>	<b>\$0</b>
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Total EB Amounts: \$205  
 Approx. Cost of Compliance: \$10,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	<b>\$14,500</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	-15.5%	<i>Adjustment</i>	<b>-\$2,250</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: A 50% reduction is recommended for Violation No. 2 because the Respondent self-disclosed to the El Paso Region that they did not have a permit for the VOC emissions.

<i>Final Penalty Amount</i>	<b>\$12,250</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	<b>\$12,250</b>
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<b>DEFERRAL</b>	20.0% Reduction	<i>Adjustment</i>	<b>-\$2,450</b>
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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>	<b>\$9,800</b>
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<b>Screening Date</b> 15-Sep-2008	<b>Docket No.</b> 2008-1519-AIR-E	<b>PCW</b>
<b>Respondent</b> Johnson Plate and Tower Fabrication, Inc.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 36559		<i>PCW Revision June 12, 2008</i>
<b>Reg. Ent. Reference No.</b> RN100819242		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> J. Craig Fleming		

### 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%
<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)** 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 enhancement is recommended to the administrative penalty because of the Average Performer classification.

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

<b>Screening Date</b> 15-Sep-2008	<b>Docket No.</b> 2008-1519-AIR-E	<b>PCW</b>	
<b>Respondent</b> Johnson Plate and Tower Fabrication, Inc.		<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 36559		<i>PCW Revision June 12, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN100819242			
<b>Media [Statute]</b> Air			
<b>Enf. Coordinator</b> J. Craig Fleming			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 106.433(7)(A), 40 Code of Federal Regulations § 63.3890(b)(1) and Tex. Health &amp; Safety Code § 382.085(b)"/>		
<b>Violation Description</b>	<input ("vocs")="" 135,939="" 2007."="" 21.78="" 500="" an="" and="" any="" at="" average="" averaged="" being="" compounds="" during="" emissions,="" emitted="" five-hour="" for="" hr="" hr")="" lbs="" of="" organic="" over="" per="" period,="" plant="" pounds="" specifically,="" the="" time.="" type="text" value="Failed to comply with the Permit-by-Rule (Registration No. 36522) for surface coating by allowing more than six pounds per hour (" vocs="" volatile="" week="" year=""/>		
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Release</b>	<b>Harm</b>	
		Major      Moderate      Minor	
	Actual	<input type="text" value="x"/>	<b>Percent</b> <input type="text" value="25%"/>
	Potential	<input type="text"/>	
<b>&gt;&gt; Programmatic Matrix</b>			
	Falsification	Major      Moderate      Minor	
	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>		
	<b>Adjustment</b>	<input type="text" value="\$7,500"/>	
		<input type="text" value="\$2,500"/>	
<b>Violation Events</b>			
	<b>Number of Violation Events</b>	<input type="text" value="4"/>	<b>Number of violation days</b> <input type="text" value="364"/>
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$10,000"/>
	monthly	<input type="text"/>	
	quarterly	<input type="text" value="x"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
	<input type="text" value="Four quarterly events are recommended for the year 2007."/>		
<b>Good Faith Efforts to Comply</b>			<b>\$0</b>
	<b>0.0% Reduction</b>		
	Before NOV	NOV to EDPRP/Settlement Offer	
	Extraordinary	<input type="text"/>	
	Ordinary	<input type="text"/>	
	N/A	<input type="text" value="x"/>	(mark with x)
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		
	<b>Violation Subtotal</b>	<input type="text" value="\$10,000"/>	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>
	<b>Estimated EB Amount</b>	<input type="text" value="\$205"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$8,448"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$8,448"/>	

### Economic Benefit Worksheet

**Respondent:** Johnson Plate and Tower Fabrication, Inc.  
**Case ID No.:** 36559  
**Reg. Ent. Reference No.:** RN100819242  
**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
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**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	\$10,000	8-May-2008	5-Oct-2008	0.41	\$205	n/a	\$205
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Approximate cost to submit a New Source Review permit application and obtain authorization. The Date Required was the date of the investigation. 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

N/A

Approx. Cost of Compliance	\$10,000	<b>TOTAL</b>	\$205
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**Screening Date** 15-Sep-2008 **Docket No.** 2008-1519-AIR-E **PCW**  
**Respondent** Johnson Plate and Tower Fabrication, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 36559 *PCW Revision June 12, 2008*  
**Reg. Ent. Reference No.** RN100819242  
**Media [Statute]** Air  
**Enf. Coordinator** J. Craig Fleming  
**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.085(b) and 382.0518(a)  
**Violation Description** Failed to obtain authorization prior to conducting surface coating activities. Specifically, the Respondent was operating surface coating operations without a permit.  
**Base Penalty** \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	x			10%

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

**Number of Violation Events** 5 **Number of violation days** 130

*mark only one with an x*

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$5,000

Five monthly events are recommended from the investigation conducted on May 8, 2008 to the date of screening on September 15, 2008.

**Good Faith Efforts to Comply** 10.0% Reduction \$500

	Before NOV	NOV to EDRP/Settlement Offer
	Extraordinary	
Ordinary		x
N/A	(mark with x)	

**Notes** The Respondent was issued a New Source Review Permit on October 5, 2008.

**Violation Subtotal** \$4,500

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

**Estimated EB Amount** \$0 **Violation Final Penalty Total** \$3,802

**This violation Final Assessed Penalty (adjusted for limits)** \$3,802

### Economic Benefit Worksheet

**Respondent:** Johnson Plate and Tower Fabrication, Inc.  
**Case ID No.:** 36559  
**Reg. Ent. Reference No.:** RN100819242  
**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)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost for the permit is included in Violation 1.

**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

N/A

Approx. Cost of Compliance \$0

TOTAL \$0



# Compliance History Report

Customer/Respondent/Owner-Operator: CN603374935 Johnson Plate and Tower Fabrication, Inc. Classification: AVERAGE Rating: 3.01

Regulated Entity: RN100819242 JOHNSON PLATE & TOWER FABRICATION Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): AIR NEW SOURCE PERMITS PERMIT 36522  
AIR NEW SOURCE PERMITS PERMIT 36398  
AIR NEW SOURCE PERMITS ACCOUNT NUMBER EE2007P  
AIR NEW SOURCE PERMITS PERMIT 85275

Location: 201 LOS MOCHIS DR, CANUTILLO, TX, 79835 Rating Date: 9/1/2008 Repeat Violator: NO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: October 13, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 15, 2003 to September 15, 2008

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

Name: J. Craig Fleming Phone: 239 - 5806

## 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 (Name Change Only)
3. If Yes, who is the current owner? Johnson Plate and Tower Fabrication, Inc.
4. If Yes, who was/were the prior owner(s)? Bergen Southwest Steel, Inc.
5. When did the change(s) in ownership occur? 3/27/2007

## 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.)  
N/A
  - 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  
JOHNSON PLATE AND TOWER  
FABRICATION, INC.  
RN100819242

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2008-1519-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 Johnson Plate and Tower Fabrication, 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 steel tubular tower manufacturing plant for wind turbines at 201 Los Mochis Drive in Canutillo, El Paso 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 1, 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 Twelve Thousand Two Hundred Fifty Dollars (\$12,250) is assessed by the Commission in settlement of the violations alleged in Section II



("Allegations"). The Respondent has paid Nine Thousand Eight Hundred Dollars (\$9,800) of the administrative penalty and Two Thousand Four Hundred Fifty Dollars (\$2,450) 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 was issued a New Source Review Permit on October 5, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to comply with the Permit-by-Rule (Registration No. 36522) for surface coating by allowing more than six pounds per hour ("lbs/hr") of volatile organic compounds ("VOCs") emissions, averaged over any five-hour period, and 500 pounds per week being emitted at any time, in violation of 30 TEX. ADMIN. CODE § 106.433(7)(A), 40 CODE OF FEDERAL REGULATIONS § 63.3890(b)(1), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on May 8, 2008. Specifically, the Plant emitted 135,939 pounds of VOCs for an average of 21.78 lbs/hr during the year 2007.
2. Failed to obtain authorization prior to conducting surface coating activities, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a), as documented during an investigation conducted on May 8, 2008. Specifically, the Respondent was operating surface coating operations without a permit.



### 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: Johnson Plate and Tower Fabrication, Inc., Docket No. 2008-1519-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. It is further ordered that the Respondent shall, within 30 days after the effective date of this Agreed Order, submit written certification that the Plant is in compliance with the VOC permitted limits of the New Source Review Permit No. 85275. The certification shall include supporting documentation to demonstrate compliance, shall be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Air Section, Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1212





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 Plant 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.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

  
\_\_\_\_\_  
For the Executive Director

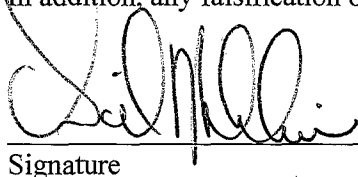
\_\_\_\_\_  
Date 1/23/2009

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.

  
\_\_\_\_\_  
Signature

November 20 2008

\_\_\_\_\_  
Date

David Nichelini

Facilities Engineer

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Johnson Plate and Tower Fabrication, Inc.

\_\_\_\_\_  
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.

