EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1528-AIR-E **TCEQ ID:** RN100543917 **CASE NO.:** 36573

RESPONDENT NAME: Whirlwind Steel Buildings, Inc.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Whirlwind Steel Buildings, 8234 Hansen Road, Houston, Harris County

TYPE OF OPERATION: Metal building fabrication plant

SMALL BUSINESS: ___ Yes _X_ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on February 2, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, MC R-13, (210) 403-4006; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Jack Sturdivant, President, Whirlwind Steel Buildings, Inc., 8234 Hansen Road, Houston, Texas 77075-1002

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint ___ Routine ___ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Record Review Relating to this Case:** August 7, 2008 **Date of NOE Relating to this Case:** August 28, 2008 (NOE) **Background Facts:** This was a record review. **AIR** Failure to submit complete, accurate, and timely annual compliance certifications ("ACCs") for the August 24, 2005 through August 23, 2006 and August 24, 2006 through August 23, 2007 certification periods; and the semi-annual deviation ("SAD") reports for the August 24, 2006 through February 23, 2007 and February 24, 2007 through August 23, 2007 SAD reporting periods. Specifically, the first ACC was due by September 22, 2006, but was not received until August 11, 2008. The second ACC was due by September 22, 2007, but was not submitted until October 29, 2007, and did not include the period from August 24, 2006 through November 22, 2006. The first SAD report was due by March 24, 2007, but was not submitted. The second SAD report was submitted within the required timeframe, but was for both the first and second SAD reporting periods, and was inadequate (missing relevant term or condition of the applicable permit, included incorrect reporting dates, and included corrective actions that had not been completed) [30 TEX. ADMIN. CODE §§ 122.143(2), (4) and (15), 122.145(2)(A) and (2)(B), 122.146(2), 122.165(a)(8), Federal Operating Permit ("FOP") No. O-02060, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $10,700 **Total Deferred:** $2,140 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $265 (remaining $8,295 is due in 35 monthly payments of $237 each) **Site Compliance History Classification** ___ **High** _X_ **Average** ___ **Poor** **Person Compliance History Classification** ___ **High** _X_ **Average** ___ **Poor** **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that the Respondent implemented the following corrective action measures at the Plant: a) On October 29, 2007, submitted a request to void FOP No. O-02060, which was voided October 17, 2008; and b) Submitted an ACC for the August 24, 2005 through August 23, 2006 certification period, which was received on August 11, 2008. **Ordering Provisions:** 2) The Order will require the Respondent to: a) Within 30 days after the effective date of this Agreed Order: i. Submit any deviations for the period of August 24, 2006 through November 22, 2006, which were not previously covered in ACCs submitted; and ii. Implement measures designed to ensure that ACCs and SADs are complete, accurate, and submitted within the required timeframes through October 17, 2008 (the date that FOP No. O-02060 was voided). 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 No. 2.a.

Additional ID No(s).: Air Account No. HX1594C

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

TCEQ

DATES					
Assigned	2-Sep-2008				
PCW	25-Sep-2008	Screening	22-Sep-2008	EPA Due	25-May-2009

RESPONDENT/FACILITY INFORMATION			
Respondent	Whirlwind Steel Buildings, Inc.		
Reg. Ent. Ref. No.	RN100543917		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36573	No. of Violations	1
Docket No.	2008-1528-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Trina Grieco
		EC's Team	Enforcement Team 5
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)		*Subtotal 1*	$10,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	7.0% Enhancement	*Subtotals 2, 3, & 7*	$700
Notes	Penalty enhancement due to one NOV issued for same or similar violations, and one NOV issued for dissimilar violations.		
Culpability	No — 0.0% Enhancement	*Subtotal 4*	$0
Notes	The Respondent does not meet the culpability criteria.		
Good Faith Effort to Comply Total Adjustments		*Subtotal 5*	$0
Economic Benefit	0.0% Enhancement*	*Subtotal 6*	$0
Total EB Amounts	$196	**Capped at the Total EB $ Amount*	
Approx. Cost of Compliance	$1,500		
SUM OF SUBTOTALS 1-7		*Final Subtotal*	$10,700
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	*Adjustment*	$0
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes			
		Final Penalty Amount	$10,700
STATUTORY LIMIT ADJUSTMENT		*Final Assessed Penalty*	$10,700
DEFERRAL	20.0% Reduction	*Adjustment*	-$2,140
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			$8,560

Screening Date 22-Sep-2008 **Docket No.** 2008-1528-AIR-E **PCW**

Respondent Whirlwind Steel Buildings, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36573

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN100543917

Media [Statute] Air

Enf. Coordinator Trina Grieco

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*)	1	5%
	Other written NOVs	1	2%
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 judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		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) 7%

>> 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

Penalty enhancement due to one NOV issued for same or similar violations, and one NOV issued for dissimilar violations.

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

Screening Date 22-Sep-2008 **Docket No.** 2008-1528-AIR-E **PCW**

Respondent Whirlwind Steel Buildings, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 36573 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN100543917

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(2), (4) and (15), 122.145(2)(A), and (2)(B), 122.146(2), 122.165(a)(8), Federal Operating Permit No. O-02060, General Terms and Conditions and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit complete, accurate, and timely annual compliance certifications ("ACCs") for the August 24, 2005 through August 23, 2006 and August 24, 2006 through August 23, 2007 certification periods; and the semi-annual deviation ("SAD") reports for the August 24, 2006 through February 23, 2007 and February 24, 2007 through August 23, 2007 SAD reporting periods. Specifically, the first ACC was due by September 22, 2006, but was not received until August 11, 2008. The second ACC was due by September 22, 2007, but was not submitted until October 29, 2007, and did not include the period from August 24, 2006 through November 22, 2006. The first SAD report was due by March 24, 2007, but was not submitted. The second SAD report was submitted within the required timeframe, but was for both the first and second SAD reporting periods, and was inadequate (missing relevant term or condition of the applicable permit, included incorrect reporting dates, and included corrective actions that had not been completed).

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirements were not met.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 4 | 731 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $10,000

Four single events (one per report) are recommended.

Good Faith Efforts to Comply

0.0% Reduction $0

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

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal $10,000

Economic Benefit (EB) for this violation

Estimated EB Amount $196

Statutory Limit Test

Violation Final Penalty Total $10,700

This violation Final Assessed Penalty (adjusted for limits) $10,700

Economic Benefit Worksheet

Respondent Whirlwind Steel Buildings, Inc.
Case ID No. 36573
Reg. Ent. Reference No. RN100543917
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$1,000	22-Sep-2006	1-May-2009	2.61	$130	n/a	$130
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$500	22-Sep-2006	1-May-2009	2.61	$65	n/a	$65

Notes for DELAYED costs: Estimated cost to implement measures designed to ensure that ACCs and SAD reports are complete, accurate, and submitted within the required timeframes ($1,000), and to prepare and submit one complete and accurate ACC for the August 24, 2006 through August 23, 2007 annual certification period and two complete and accurate SAD reports for the August 27, 2006 through February 26, 2007 and February 27, 2007 through August 26, 2008 SAD reporting periods ($500). Date required is the date the first report was due. Final date is the date corrective actions are projected to be completed.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $1,500

TOTAL $196

Compliance History

Customer/Respondent/Owner-Operator:	CN600255095	Whirlwind Steel Buildings, Inc.	Classification: AVERAGE	Rating: 0.71
Regulated Entity:	RN100543917	WHIRLWIND STEEL BUILDINGS	Classification: AVERAGE	Site Rating: 0.71

ID Number(s):			
	AIR OPERATING PERMITS	ACCOUNT NUMBER	HX1594C
	AIR OPERATING PERMITS	PERMIT	2060
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HX1594C
	AIR NEW SOURCE PERMITS	AFS NUM	4820101497
	AIR NEW SOURCE PERMITS	PERMIT	53869
	STORMWATER	PERMIT	TXR05K077

Location: 8234 HANSEN RD, HOUSTON, TX, 77075 Rating Date: 9/1/2008 Repeat Violator: NO

TCEQ Region: REGION 12 – HOUSTON

Date Compliance History Prepared: September 25, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 25, 2003 to September 25, 2008

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

Name: Trina Grieco Phone: (210) 403-4006

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 08/28/2008 (686720)
2 03/15/2006 (450399)
3 07/07/2005 (397937)
4 05/03/2005 (378309)
5 05/18/2004 (269216)
6 03/09/2004 (256276)
7 12/30/2003 (258797)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 02/27/2004 (256276)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 106, SubChapter T 106.454(1)(E)

30 TAC Chapter 115, SubChapter E 115.412(1)(C)
30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: The RE failed to display a permanent and conspicous label summarizing proper operating procedures to minimize emissions.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter E 115.412(1)(A)
Description: The RE failed to ensure that a degreaser cover was closed when parts were not being handled in the cleaner.

Date: 05/03/2005 (378309)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.146(2)
Rqmt Prov: OP General Conditions
Description: Failure to submit Annual Compliance Certification and Deviation Report on time.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	
WHIRLWIND STEEL BUILDINGS,	§	**TEXAS COMMISSION ON**
INC.	§	
RN100543917	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1528-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 Whirlwind Steel Buildings, 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 building fabrication plant at 8234 Hansen Road in Houston, Harris 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 September 2, 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 Ten Thousand Seven Hundred Dollars ($10,700) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). the Respondent has paid Two Hundred Sixty-Five Dollars ($265) of the administrative penalty and Two Thousand One Hundred Forty Dollars ($2,140) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the

Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Eight Thousand Two Hundred Ninety-Five Dollars ($8,295) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Thirty-Seven Dollars ($237) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 implemented the following corrective action measures at the Plant:

   a. On October 29, 2007, submitted a request to void Federal Operating Permit ("FOP") No. O-02060, which was voided October 17, 2008; and

   b. Submitted an annual compliance certification ("ACC") for the August 24, 2005 through August 23, 2006 certification period, which was received on August 11, 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 failed to submit complete, accurate, and timely ACCs for the August 24, 2005 through August 23, 2006 and August 24, 2006

through August 23, 2007 certification periods; and the semi-annual deviation ("SAD") reports for the August 24, 2006 through February 23, 2007 and February 24, 2007 through August 23, 2007 SAD reporting periods, in violation of 30 TEX. ADMIN. CODE §§ 122.143(2), (4) and (15), 122.145(2)(A), and (2)(B), 122.146(2), 122.165(a)(8), FOP No. O-02060, General Terms and Conditions and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on August 7, 2008. Specifically, the first ACC was due by September 22, 2006, but was not received until August 11, 2008. The second ACC was due by September 22, 2007, but was not submitted until October 29, 2007, and did not include the period from August 24, 2006 through November 22, 2006. The first SAD report was due by March 24, 2007, but was not submitted. The second SAD report was submitted within the required timeframe, but was for both the first and second SAD reporting periods, and was inadequate (missing relevant term or condition of the applicable permit, included incorrect reporting dates, and included corrective actions that had not been completed).

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: Whirlwind Steel Buildings, Inc., Docket No. 2008-1528-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 undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order:

      i. Submit any deviations for the period of August 24, 2006 through November 22, 2006, which were not previously covered in ACC's submitted; and

      ii. Implement measures designed to ensure that ACCs and SADs are complete, accurate, and submitted within the required timeframes through October 17, 2008 (the date that FOP No. O-02060 was voided).

   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. 2.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 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:

Air 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 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

_____ 1/22/2009
For the Executive Director 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.

_____ 11-21-2008
Signature Date

Jack Sturdivant President
Name (Printed or typed) Title
Authorized Representative of
Whirlwind Steel Buildings, Inc.

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.