

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1762-AIR-E **TCEQ ID:** RN100218221 **CASE NO.:** 36790

RESPONDENT NAME: Flowers Baking Company of Tyler, LLC

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 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>SITE WHERE VIOLATION(S) OCCURRED: Flowers Baking Company of Tyler, 1200 West Erwin Street, Tyler, Smith County</p> <p>TYPE OF OPERATION: Bread baking facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 March 9, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. John Muennink, Enforcement Division, Enforcement Team 5, MC R-14, (361) 825-3423; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Bobby Harrison, President, Flowers Baking Company of Tyler, LLC, P.O. Box 360, Tyler, Texas 75710 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 type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 7, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 31, 2008 (NOE)</p> <p>Background Facts: This was a record review investigation.</p> <p>AIR</p> <p>Failure to submit an annual permit compliance certification for the reporting period of January 1, 2007 to December 31, 2007, within 30 days after the end of the certification period. Specifically, the certification was submitted on June 16, 2008, making it 138 days late [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), Federal Operating Permit No. O-02759, General Terms and Conditions and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$1,925</p> <p>Total Deferred: \$385 <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: \$1,540</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on June 16, 2008, the Respondent submitted the annual compliance certification to the Tyler Regional Office for the reporting period of January 1, 2007 to December 31, 2007.</p>

Additional ID No(s): Air SK0346R



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Nov-2008			
	PCW	10-Nov-2008	Screening	10-Nov-2008	EPA Due 7-Aug-2009

RESPONDENT/FACILITY INFORMATION

Respondent	Flowers Baking Company of Tyler, LLC	
Reg. Ent. Ref. No.	RN100218221	
Facility/Site Region	5-Tyler	Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No.	36790	No. of Violations	1
Docket No.	2008-1762-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Daniel Siringi
		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	\$2,500
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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	2.0% Enhancement	Subtotals 2, 3, & 7	\$50
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Notes: Enhancement for one dissimilar NOV in the past five years at this Plant.

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	\$625
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$66
Approx. Cost of Compliance \$3,500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,925
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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	\$1,925
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,925
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DEFERRAL	20.0% Reduction	Adjustment	-\$385
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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.

PAYABLE PENALTY	\$1,540
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Screening Date 10-Nov-2008

Docket No. 2008-1762-AIR-E

PCW

Respondent Flowers Baking Company of Tyler, LLC

Policy Revision 2 (September 2002)

Case ID No. 36790

PCW Revision, October 30, 2008

Reg. Ent. Reference No. RN100218221

Media [Statute] Air

Enf. Coordinator Daniel Siringi

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	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%
<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) 2%

>> **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

Enhancement for one dissimilar NOV in the past five years at this Plant.

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

Screening Date 10-Nov-2008	Docket No. 2008-1762-AIR-E	PCW		
Respondent Flowers Baking Company of Tyler, LLC	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 36790	<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No. RN100218221				
Media [Statute] Air				
Enf. Coordinator Daniel Siringi				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	30 Tex. Admin. Code §§ 122.143(4) and 122.146(2), Federal Operating Permit No. O-02759, General Terms and Conditions and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to submit an annual permit compliance certification for the reporting period of January 1, 2007 to December 31, 2007, within 30 days after the end of the certification period. Specifically, the certification was submitted on June 16, 2008, making it 138 days late.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="25%"/>	
Matrix Notes	100% of the rule requirement was not met.			
		Adjustment	<input type="text" value="\$7,500"/>	
		<input type="text" value="\$2,500"/>		
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="138"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
		Violation Base Penalty	<input type="text" value="\$2,500"/>	
One single event is recommended.				
Good Faith Efforts to Comply		<input type="text" value="25.0%"/>	Reduction	<input type="text" value="\$625"/>
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Ordinary	x	<input type="text"/>	<input type="text"/>	
N/A	<input type="text"/>	<small>(mark with x)</small>		
Notes	The Respondent completed all the corrective actions on June 16, 2008.			
		Violation Subtotal	<input type="text" value="\$1,875"/>	
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		<input type="text" value="\$66"/>	Violation Final Penalty Total	
		<input type="text" value="\$1,925"/>		
			This violation Final Assessed Penalty (adjusted for limits)	
			<input type="text" value="\$1,925"/>	

Economic Benefit Worksheet

Respondent: Flowers Baking Company of Tyler, LLC
Case ID No.: 36790
Reg. Ent. Reference No.: RN100218221
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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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)	\$3,500	30-Jan-2008	16-Jun-2008	0.38	\$66	n/a	\$66

Notes for DELAYED costs

Estimated cost of preparing and submitting the annual compliance certification in a timely manner. The date required is the date the certification was required to be reported and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,500

TOTAL

\$66

Compliance History Report

Customer/Respondent/Owner-Operator: CN601559339 Flowers Baking Company of Tyler, LLC Classification: AVERAGE Rating: 0.43

Regulated Entity: RN100218221 FLOWERS BAKING COMPANY OF TYLER Classification: AVERAGE Site Rating: 0.43

ID Number(s):
 AIR OPERATING PERMITS ACCOUNT NUMBER SK0346R
 AIR OPERATING PERMITS PERMIT 2759
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER SK0346R
 AIR NEW SOURCE PERMITS PERMIT 22041
 AIR NEW SOURCE PERMITS AFS NUM 4842300040
 STORMWATER PERMIT TXR05N464

Location: 1200 W ERWIN ST, TYLER, TX, 75702 Rating Date: 9/1/2008 Repeat Violator: NO

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: November 10, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 11, 2003 to November 10, 2008

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

Name: Daniel Siringi Phone: (409) 899-8799

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | 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.)

- | | | | |
|-----|---|------------|----------|
| N/A | 1 | 05/25/2004 | (273354) |
| | 2 | 10/25/2004 | (292863) |
| | 3 | 06/30/2005 | (398051) |
| | 4 | 05/08/2006 | (464274) |
| | 5 | 04/10/2008 | (640050) |
| | 6 | 08/11/2008 | (685165) |
| | 7 | 10/31/2008 | (704756) |

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

Date: 04/02/2008 (640050)

Self YES Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THSC Chapter 382 382.085(b)
 Rqmt Prov: OP 2759 STC 3
 Description: Failure to comply with the requirements of the Maximum Allowable Emission Rates Table (MART) of TCEQ Air Permit No. 22041.

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
FLOWERS BAKING COMPANY OF
TYLER, LLC
RN100218221**

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

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§
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§
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AGREED ORDER DOCKET NO. 2008-1762-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 Flowers Baking Company of Tyler, LLC ("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 bread baking facility at 1200 West Erwin Street in Tyler, Smith 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 November 5, 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 One Thousand Nine Hundred Twenty-Five Dollars (\$1,925) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Forty Dollars (\$1,540) of the administrative penalty and Three Hundred Eighty-Five Dollars (\$385) 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.

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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 on June 16, 2008, the Respondent submitted the annual compliance certification to the Tyler Regional Office for the reporting period of January 1, 2007 to December 31, 2007.
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 an annual permit compliance certification for the reporting period of January 1, 2007 to December 31, 2007, within 30 days after the end of the certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), Federal Operating Permit No. O-02759, General Terms and Conditions and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on October 7, 2008. Specifically, the certification was submitted on June 16, 2008, making it 138 days late.

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: Flowers Baking Company of Tyler, LLC, Docket No. 2008-1762-AIR-E" to:

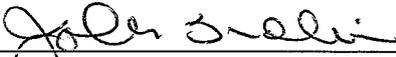
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

2/5/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

12-16-08
Date

Bobby Harrison
Name (Printed or typed)
Authorized Representative of
Flowers Baking Company of Tyler, LLC

PRESIDENT
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

