EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1378-AIR-E **TCEQ ID:** RN101062099 **CASE NO.:** 36430

RESPONDENT NAME: MEMC Pasadena, 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: MEMC Pasadena, 3000 North South Avenue, Pasadena, Harris County

TYPE OF OPERATION: Chemical manufacturing 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 March 16, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Ms. Rebecca Johnson, Enforcement Division, Enforcement Team 5, MC R-14, (361) 825-3420; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387
Respondent: Mr. Chris Ofondu, Environmental Engineer, MEMC Pasadena, Inc., 3000 North South Avenue, Pasadena, Texas 77503
Mr. Rich Booher, Site Manager, MEMC Pasadena, Inc., 3000 North South Avenue, Pasadena, Texas 77503
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 _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** July 17, 2008 **Date of NOV/NOE Relating to this Case:** August 13, 2008 (NOE) **Background Facts:** This was a routine investigation. **AIR** 1) Failure to prevent unauthorized emissions during Incident No. 109377. Specifically, during the June 13, 2008 emissions event 5,159 pounds of unauthorized silicon dioxide emissions were released from Inorganic Flare X-9846 over a period of thirty minutes. Since the emissions event was avoidable and not properly reported, the demonstrations in 30 TEX. ADMIN. CODE § 101.222 necessary to present an affirmative defense were not met [30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 9597, Special Condition No. 1, and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failure to submit the final record for Incident No. 109377 within fourteen days after the end of the emissions event. Specifically, Incident No. 109377 ended on June 13, 2008, however the final record was not submitted until August 6, 2008 [30 TEX. ADMIN. CODE § 101.201(c) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $9,639 **Total Deferred:** $1,927 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $3,856 **Total Paid to General Revenue:** $3,856 **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	**Ordering Provisions:** 1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (see SEP Attachment A). 2) The Order will also require the Respondent to: a) Within 30 days after the effective date of this Agreed Order: i) Implement measures designed to prevent the recurrence of emissions events due to the same cause as Incident No. 109377; and ii) Implement measures designed to ensure that emissions events are reported in accordance with 30 TEX. ADMIN. CODE § 101.201. 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 2.a.

Additional ID No(s).: Air HX0029W

Attachment A
Docket Number: 2008-1378-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**MEMC Pasadena, Inc.**
Payable Penalty Amount:	**Seven Thousand Seven Hundred Twelve Dollars ($7,712)**
SEP Amount:	**Three Thousand Eight Hundred Fifty-Six Dollars ($3,856)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program**
Location of SEP:	**Harris County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Harris County. The contribution will be used in accordance with the ***Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality***. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	18-Aug-2008				
PCW	25-Aug-2008	Screening	25-Aug-2008	EPA Due	10-May-2009

RESPONDENT/FACILITY INFORMATION

Respondent	MEMC Pasadena, Inc.		
Reg. Ent. Ref. No.	RN101062099		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	36430	No. of Violations	2
Docket No.	2008-1378-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rebecca Johnson
		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* $5,100

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 89.0% Enhancement — *Subtotals 2, 3, & 7* $4,539

Notes: Penalty enhancement due to one Agreed Order without a denial of liability, one Court Order with a denial of liability, six NOVs issued for same or similar violations, and two NOVs issued for unrelated 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 $158
Approx. Cost of Compliance $3,500
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $9,639

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $9,639

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $9,639

DEFERRAL 20.0% Reduction — *Adjustment* -$1,927

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 $7,712

Screening Date 25-Aug-2008 **Docket No.** 2008-1378-AIR-E **PCW**

Respondent MEMC Pasadena, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 36430 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101062099

Media [Statute] Air

Enf. Coordinator Rebecca Johnson

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*)	6	30%
	Other written NOVs	2	4%
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	1	25%
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*)	1	30%
	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) 89%

>> 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 Agreed Order without a denial of liability, one Court Order with a denial of liability, six NOVs issued for same or similar violations, and two NOVs issued for unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 89%

Screening Date 25-Aug-2008 **Docket No.** 2008-1378-AIR-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

Respondent MEMC Pasadena, Inc.

Case ID No. 36430

Reg. Ent. Reference No. RN101062099

Media [Statute] Air

Enf. Coordinator Rebecca Johnson

Violation Number 1

Rule Cite(s) Air Permit No. 9597, Special Condition No. 1, 30 Tex. Admin. Code § 116.115(c), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent unauthorized emissions during Incident No. 109377. Specifically, during the June 13, 2008 emissions event silane gas was released from Inorganic Flare X-9846 over a period of 30 minutes which ignited upon contact with the air to produce 5,159 pounds of unauthorized silicon dioxide emissions. Since the emissions event was not properly reported and could have been avoided by properly tightening and installing the compression fitting on the purge line from the Silane Production Column, the demonstrations in 30 Tex. Admin. Code § 101.222 necessary to present an affirmative defense were not met.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual		x	
	Potential			

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment have been exposed to a significant amount of pollutants during an emissions event that resulted in a fire, explosion, and the temporary shut down of the Houston Ship Channel.

Adjustment $5,000

$5,000

Violation Events

Number of Violation Events 1 — 1 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $5,000

One monthly event is 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 $5,000

Economic Benefit (EB) for this violation

Estimated EB Amount $136

Statutory Limit Test

Violation Final Penalty Total $9,450

This violation Final Assessed Penalty (adjusted for limits) $9,450

Economic Benefit Worksheet

Respondent MEMC Pasadena, Inc.
Case ID No. 36430
Reg. Ent. Reference No. RN101062099
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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)	$3,000	13-Jun-2008	10-May-2009	0.91	$136	n/a	$136

Notes for DELAYED costs: Estimated cost to implement measures designed to prevent the recurrence of emissions events caused by the improper installation of a compressor fitting. Date required is the date of the emissions event. Final date is the projected date all corrective actions will 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 $3,000

TOTAL $136

Screening Date 25-Aug-2008 **Docket No.** 2008-1378-AIR-E **PCW**

Respondent MEMC Pasadena, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 36430 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101062099

Media [Statute] Air

Enf. Coordinator Rebecca Johnson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 101.201(c) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit the final record for Incident No. 109377 within fourteen days after the end of the emissions event. Specifically, Incident No. 109377 ended on June 13, 2008; however the final record was not submitted until August 6, 2008.

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 1%

Matrix Notes: Less than 30% of the reporting requirements were not met.

Adjustment $9,900

$100

Violation Events

Number of Violation Events 1 | 40 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is 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 $100

Economic Benefit (EB) for this violation

Estimated EB Amount $22

Statutory Limit Test

Violation Final Penalty Total $189

This violation Final Assessed Penalty (adjusted for limits) $189

Economic Benefit Worksheet

Respondent MEMC Pasadena, Inc.
Case ID No. 36430
Reg. Ent. Reference No. RN101062099
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)	$500	27-Jun-2008	10-May-2009	0.87	$22	n/a	$22

Notes for DELAYED costs: Estimated cost to implement measures designed to ensure that emissions events are properly reported. Date required is the date the final record was due to be submitted. Final date is the projected date all corrective actions will 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: $500

TOTAL: $22

Compliance History

Customer/Respondent/Owner-Operator:	CN600619415 MEMC Pasadena, Inc.	Classification: AVERAGE	Rating: 12.47
Regulated Entity:	RN101062099 MEMC PASADENA	Classification: AVERAGE	Site Rating: 12.47

ID Number(s):

AIR OPERATING PERMITS	PERMIT	1412
AIR OPERATING PERMITS	ACCOUNT NUMBER	HX0029W
AIR NEW SOURCE PERMITS	PERMIT	9597
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HX0029W
AIR NEW SOURCE PERMITS	REGISTRATION	55246
AIR NEW SOURCE PERMITS	REGISTRATION	75654
AIR NEW SOURCE PERMITS	AFS NUM	4820101473
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXR000007088
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	84039
IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	84039

Location: 3000 N SOUTH AVE, PASADENA, TX, 77503 Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: September 05, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 28, 2003 to August 28, 2008

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

Name: Rebecca Johnson Phone: (713) 422-8931

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.

Effective Date: 10/01/2004 **COURTORDER**

Classification: Moderate

Citation: 5C THC Chapter 382, SubChapter A 382.085(a)

Description: On May 23, 2002, 3, 720 pounds of silicon tetraflouride were released into the air when a hose ruptured at the MEMC plant located at 3000 No. South Street, Pasadena, Texas.

Effective Date: 05/09/2005 **ADMINORDER 2004-0985-AIR-E**

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: Special Conditions Table PERMIT

Description: TCEQ staff documented that during the January 27, 2004 stack test, Caustic Scrubber, Y-D-3 exceeded the VOC maximum allowable emission rate of <0.01 lb/hr with a rate of 0.33 lb/hr. MEMC failed to comply with the total emissions of air contaminants by exceeding the values stated on the table attached to the permit.

Classification: Moderate

Citation: 2A TWC Chapter 5, SubChapter A 5.702
30 TAC Chapter 335, SubChapter J 335.323

Description: TCEQ staff documented that MEMC owes outstanding fee payments on the following accounts:

toxic chemical release financial account numbers 0501917 and 0502057, hazardous waste generation financial account number 0312831G and non-hazardous waste generation financial account number 0312831N.

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	10/01/2003	(249755)
2	10/30/2003	(251155)
3	03/09/2004	(265185)
4	05/12/2004	(271168)
5	06/04/2004	(266126)
6	06/04/2004	(266155)
7	09/08/2004	(257979)
8	11/23/2004	(333670)
9	12/08/2004	(336204)
10	12/08/2004	(336201)
11	08/17/2005	(394198)
12	04/06/2006	(453290)
13	04/25/2007	(512503)
14	12/06/2007	(595631)
15	01/23/2008	(611333)
16	02/26/2008	(618266)
17	03/14/2008	(610799)
18	04/07/2008	(640627)
19	04/21/2008	(640075)
20	06/10/2008	(655935)
21	06/10/2008	(671582)
22	08/13/2008	(686347)

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

Date: 06/21/2004 (257979)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PERMIT TCEQ Air Permit #9597 SC #1

Description: Exceeded permit limit during an avoidable emissions event.

Date: 08/18/2005 (394198)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter H 101.376(d)(1)(B)

Description: The intended first day of the use for the DERCs was April 1, 2005. The application for the DERCs was submitted on February 26, 2005. The submittal is required 45 days prior to use.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 117, SubChapter D 117.475(c)(1)

Description: Furnaces PA-21 and PA-22 were tested in February 2005 and found to have NOx emissions of 64.9 ppm and 61.3 ppm respectively. The 30 TAC 117.475(c)(1)(A) limit is 30 ppm.

Date: 04/25/2007 (512503)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter D 115.352(4)
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-6(a)(1)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: OP OP O-01412, Special Conditions 1A & 12
PERMIT Permit 9597, Special Condition 10E

Description: Failure to seal open-ended lines volatile organic compound service.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter D 382.085(b)
Rqmt Prov: PERMIT Permit 9597, Special Condition 6
OP OP O-01412, Special Condition 12
Description: Failure to maintain the required the minimum of 90 percent removal efficiency as stated in the NSR Permit 9597, Special Condition 6.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter D 382.085(b)
Rqmt Prov: OP OP O-01412, Special Condition 12
PERMIT Permit 9597, Special Condition 6
Description: Failure to maintain the caustic reactor's maximum waste stream feed rate of 170 pounds per hour.

Date: 12/07/2007 (595631)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.146(2)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: OP FOP No. O-01412
Description: MEMC failed to submit a PCC report within 30 days of the end of the PCC reporting period.

Date: 01/23/2008 (611333)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THSC Chapter 382 382.085(b)
Rqmt Prov: PERMIT No.9597, Special Condition 3
Description: MEMC failed to prevent excess opacity event
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(4)(A)
Description: MEMC failed to control visible emissions from its Process Flare

Date: 02/26/2008 (618266)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THSC Chapter 382 382.085(b)
Rqmt Prov: PERMIT 9597, Special Condition 3
Description: MEMC Pasadena Inc. failed to comply with the opacity limits specified in TCEQ Permit No. 9597.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(4)(A)
Description: MEMC Pasadena Inc. failed to control visble emissions from the Inorganic Flare.

Date: 03/14/2008 (610799)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)
Description: Failure to revise the Notice of Registration.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(A)
30 TAC Chapter 335, SubChapter E 335.112(a)(8)
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(1)(i)
40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.174
Description: Each hazardous waste container storage area must be inspected weekly for leakage or deterioration. During the investigation, it was noted that inspection logs for waste management unit 001 were missing.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.4
Description: Failure to send Class 1 waste to an authorized facility.

Date: 06/10/2008 (655935)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 101, SubChapter F 101.201(b)(1)(H)
Description: MEMC failed to comply with the emission event reporting requirements.

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	§	**TEXAS COMMISSION ON**
MEMC PASADENA, INC.	§	
RN101062099	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1378-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 MEMC Pasadena, 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 chemical manufacturing plant at 3000 North South Avenue in Pasadena, 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 August 18, 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 Nine Thousand Six Hundred Thirty-Nine Dollars ($9,639) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Eight Hundred Fifty-Six Dollars ($3,856) of the administrative penalty and One Thousand Nine Hundred Twenty-Seven Dollars ($1,927) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with

the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Three Thousand Eight Hundred Fifty-Six Dollars ($3,856) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director 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 Plant, the Respondent is alleged to have:

1. Failed to prevent unauthorized emissions during Incident No. 109377, in violation of Air Permit No. 9597, Special Condition No. 1, 30 TEX. ADMIN. CODE § 116.115(c), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 17, 2008. Specifically, during the June 13, 2008 emissions event 5,159 pounds of unauthorized silicon dioxide emissions were released from Inorganic Flare X-9846 over a period of thirty minutes. Since the emissions event was avoidable and not properly reported, the demonstrations in 30 TEX. ADMIN. CODE § 101.222 necessary to present an affirmative defense were not met.

2. Failed to submit the final record for Incident No. 109377 within fourteen days after the end of the emissions event, in violation of 30 TEX. ADMIN. CODE § 101.201(c) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 17, 2008. Specifically, Incident No. 109377 ended on June 13, 2008, however the final record was not submitted until August 6, 2008.

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: MEMC Pasadena, Inc., Docket No. 2008-1378-AIR-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Three Thousand Eight Hundred Fifty-Six Dollars ($3,856) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that the Respondent shall undertake the following technical requirements:

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

      i. Implement measures designed to prevent the recurrence of emissions events due to the same cause as Incident No. 109377; and

      ii. Implement measures designed to ensure that emissions events are reported in accordance with 30 TEX. ADMIN. CODE § 101.201.

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

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

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.

5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This 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.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 2/16/2009
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.

_____ 12/12/08
Signature Date

Rich Booher Site Manager
Name (Printed or typed) Title
Authorized Representative of
MEMC Pasadena, 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.

Attachment A
Docket Number: 2008-1378-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**MEMC Pasadena, Inc.**
Payable Penalty Amount:	**Seven Thousand Seven Hundred Twelve Dollars ($7,712)**
SEP Amount:	**Three Thousand Eight Hundred Fifty-Six Dollars ($3,856)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program**
Location of SEP:	**Harris County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent will contribute to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program in Harris County. The contribution will be used in accordance with the ***Supplemental Environmental Project Agreement between the Houston-Galveston AERCO and the Texas Commission on Environmental Quality***. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP monies will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. Those SEP monies will be used exclusively by the school districts and transit agencies as supplements to meet the local match requirements of the EPA. SEP monies will be used to pay for the cost of replacing older diesel buses with alternative fueled or clean diesel buses. The old buses will be permanently retired and only sold for scrap. The schools and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by EPA or the California Air Resources Board.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing particulate emissions on buses by more than 90% below today's level and reducing hydrocarbons below measurement capability.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, Texas 77227-2777

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.