

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1023-AIR-E **TCEQ ID:** RN100224575 **CASE NO.:** 36133
RESPONDENT NAME: Union Tank Car Company

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: Union Tank Car Cleveland, 604 County Road 2205, Cleveland, Liberty County</p> <p>TYPE OF OPERATION: Railcar refurbishing plant</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 February 16, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2134; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Mark Baumgardner, Plant Manager, Union Tank Car Company, 604 County Road 2205, Cleveland, Texas 77327 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 21, 2008</p> <p>Date of NOV/NOE Relating to this Case: May 28, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>1) Failure to conduct quarterly accuracy audits on Emission Point No. ("EPN") 023. Specifically, during the investigation it was determined that the quarterly audits had not been conducted [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Air Permit No. 6370, Special Condition No. 8C(2), Federal Operating Permit ("FOP") No. O-01539, Special Condition No. 6, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to install a continuous flow monitor on the flare (EPN E011). Specifically, the Respondent did not have the monitor installed which, when installed and operational, will provide a record of the vent stream flow to the flare [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Air Permit No. 6370B, Special Condition No. 12D, FOP No. O-01539, Special Condition No. 6, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failure to submit semi-annual deviation reports. Specifically, the Respondent failed to report the failure to conduct quarterly accuracy audits, and also the failure to install a continuous flow monitor on the flare as deviations on the annual compliance certification form for the certification period of October 22, 2006 through October 21, 2007, and on deviation reports for the reporting periods</p>	<p>Total Assessed: \$11,530</p> <p>Total Deferred: \$2,306 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$4,612</p> <p>Total Paid to General Revenue: \$4,612</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 May 14, 2008, the Respondent conducted a quarterly accuracy audit on the Regenerative Thermal Oxidizer (EPN 023).</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin conducting daily visible emission observations of the flare and record the results of these observations daily;</p> <p>b. Within 30 days after the effective date of this Agreed Order, submit the deviation reports for the reporting periods of October 22, 2006 through April 21, 2007, and April 22, 2007 through October 21, 2007, and develop and begin implementing improved reporting practices, to ensure timely submission of deviation reports;</p> <p>c. Within 90 days after the effective date of this Agreed Order, install and commence operation of a continuous flow monitor on EPN E011; and</p> <p>d. Within 105 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 Nos. 2.a. through 2.c.</p>

<p>of October 22, 2006 through April 21, 2007, and for April 22, 2007 through October 21, 2007. The deviation reports were due no later than May 21, 2007, and November 21, 2007, respectively [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B) and (C), FOP No. O-01539, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>4) Failure to maintain adequate records to demonstrate compliance with visible emission observations of the flare (EPN E011). Specifically, the records submitted failed to provide sufficient information to demonstrate compliance [30 TEX. ADMIN. CODE §§ 111.111(a)(4)(A)(ii) and 122.143(4), FOP No. O-01539, Special Condition No. 3, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		
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Additional ID No(s): LH0027W

Attachment A
Docket Number: 2008-1023-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Union Tank Car Company
Payable Penalty Amount: Nine Thousand Two Hundred Twenty-Four Dollars (\$9,224)
SEP Amount: Four Thousand Six Hundred Twelve Dollars (\$4,612)
Type of SEP: Pre-approved
Third-Party Recipient: Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program
Location of SEP: Liberty 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 Liberty 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 of 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:

Union Tank Car Company
Agreed Order – Attachment A

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

DATES	Assigned	2-Jun-2008	Screening	24-Jun-2008	EPA Due	22-Feb-2009
	PCW	22-Sep-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Union Tank Car Company
Reg. Ent. Ref. No.	RN100224575
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36133	No. of Violations	4
Docket No.	2008-1023-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Suzanne Walrath
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$9,500
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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	24.0% Enhancement	Subtotals 2, 3, & 7	\$2,280
Notes	The Respondent has received two Notices of Violation for non similar violations, and has been issued one Agreed Order containing a denial of liability.		

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	\$250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$2,271	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$37,500		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,530
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
Final Penalty Amount	\$11,530

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,530
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,306
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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.
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PAYABLE PENALTY	\$9,224
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Screening Date 24-Jun-2008

Docket No. 2008-1023-AIR-E

PCW

Respondent Union Tank Car Company

Policy Revision 2 (September 2002)

Case ID No. 36133

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN100224575

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

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	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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) 24%

>> 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

The Respondent has received two Notices of Violation for non similar violations, and has been issued one Agreed Order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 24%

Screening Date 24-Jun-2008	Docket No. 2008-1023-AIR-E	PCW		
Respondent Union Tank Car Company		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36133		<i>PCW Revision June 12, 2008</i>		
Reg. Ent. Reference No. RN100224575				
Media [Statute] Air				
Enf. Coordinator Suzanne Walrath				
Violation Number 1				
Rule Cite(s)	30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Air Permit No. 6370, Special Condition No. 8C(2), Federal Operating Permit ("FOP") No. O-01539, Special Condition No. 6, and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to conduct quarterly accuracy audits on the Regenerative Thermal Oxidizer (Emission Point No. ("EPN") 023). Specifically, during the investigation it was determined that the quarterly audits had not been conducted.			
	Base Penalty	\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential		x	
				Percent 10%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
				Percent 0%
Matrix Notes	Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.			
				Adjustment \$9,000
				\$1,000
Violation Events				
	Number of Violation Events	1	Number of violation days	23
<i>mark only one with an x</i>	daily			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	x		
			Violation Base Penalty	\$1,000
One single event is recommended.				
Good Faith Efforts to Comply			25.0% Reduction	\$250
		Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary				
Ordinary	x			
N/A			(mark with x)	
Notes	The Respondent achieved compliance for this violation on May 14, 2008.			
			Violation Subtotal	\$750
Economic Benefit (EB) for this violation			Statutory Limit Test	
	Estimated EB Amount	\$8	Violation Final Penalty Total	\$990
			This violation Final Assessed Penalty (adjusted for limits)	\$990

Economic Benefit Worksheet

Respondent Union Tank Car Company
Case ID No. 36133
Reg. Ent. Reference No. RN100224575
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$2,500	21-Apr-2008	14-May-2008	0.06	\$8	n/a	\$8

Notes for DELAYED costs

These are estimated costs to conduct a quarterly accuracy audit on EPN 023, beginning on the date of the investigation, and ending on the date compliance was achieved.

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

\$2,500

TOTAL

\$8

Screening Date 24-Jun-2008 **Docket No.** 2008-1023-AIR-E **PCW**
Respondent Union Tank Car Company *Policy Revision 2 (September 2002)*
Case ID No. 36133 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN100224575
Media [Statute] Air
Enf. Coordinator Suzanne Walrath

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Air Permit No. 6370B, Special Condition No. 12D, FOP No. O-01539, Special Condition No. 6, and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to install a continuous flow monitor on the flare ("EPN No. E011"). Specifically, the Respondent did not have the monitor installed, which, when installed and operational, will provide a record of the vent stream flow to the flare.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential			X	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 64 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/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 \$1,000

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

Estimated EB Amount \$1,985 Violation Final Penalty Total \$1,240

This violation Final Assessed Penalty (adjusted for limits) \$1,240

Economic Benefit Worksheet

Respondent: Union Tank Car Company
Case ID No.: 36133
Reg. Ent. Reference No.: RN100224575
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$30,000	21-Apr-2008	1-Apr-2009	0.95	\$95	\$1,890	\$1,985
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

These are estimated costs to install a continuous flow monitor on EPN E011, beginning on the date of the investigation, and ending on the projected date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$30,000

TOTAL

\$1,985

Screening Date 24-Jun-2008	Docket No. 2008-1023-AIR-E	PCW		
Respondent Union Tank Car Company	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36133	<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN100224575				
Media [Statute] Air				
Enf. Coordinator Suzanne Walrath				
Violation Number <input type="text" value="3"/>				
Rule Cite(s)	30 Tex. Admin. Code §§ 122.143(4), 122.145(2)(B) and (C), FOP No. O-01539, General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to submit semi-annual deviation reports. Specifically, the Respondent failed to report the failure to conduct quarterly accuracy audits, and also the failure to install a continuous flow monitor on the flare as deviations on the annual compliance certification form for the certification period of October 22, 2006 through October 21, 2007, and on deviation reports for the reporting periods of October 22, 2006 through April 21, 2007, and for April 22, 2007 through October 21, 2007. The deviation reports were due no later than May 21, 2007, and November 21, 2007, respectively.			
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"/>	<input checked="" type="text" value="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="2"/>	Number of violation days	
		<input type="text" value="389"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="text" value="x"/>		
<input type="text" value="\$5,000"/>				
Two single events are recommended for the two deviation reports that were not submitted.				
Good Faith Efforts to Comply				
		<input type="text" value="0.0%"/>	Reduction	
		<input type="text" value="Before NOV"/>	<input type="text" value="NOV to EDRP/Settlement Offer"/>	
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="text" value="x"/>	<input type="text" value="(mark with x)"/>		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		<input type="text" value="\$5,000"/>		
Economic Benefit (EB) for this violation				
Statutory Limit Test				
Estimated EB Amount	<input type="text" value="\$140"/>	Violation Final Penalty Total	<input type="text" value="\$6,200"/>	
		<input type="text" value="\$6,200"/>		
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$6,200"/>		

Economic Benefit Worksheet

Respondent: Union Tank Car Company
Case ID No.: 36133
Reg. Ent. Reference No.: RN100224575
Media: Air
Violation No.: 3

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$1,500	21-May-2007	1-Apr-2009	1.87	\$140	n/a	\$140

Notes for DELAYED costs

These are estimated costs for filing a deviation report, beginning on the date the first deviation report was due, and ending on the projected date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$140

Screening Date 24-Jun-2008	Docket No. 2008-1023-AIR-E	PCW
Respondent Union Tank Car Company		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 36133		<small>PCW Revision June 12, 2008</small>
Reg. Ent. Reference No. RN100224575		
Media [Statute] Air		
Enf. Coordinator Suzanne Walrath		
Violation Number	4	
Rule Cite(s)	30 Tex. Admin. Code §§ 111.111(a)(4)(A)(ii), 122.143(4), FOP No. O-01539, Special Condition No. 3, and Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failed to maintain adequate records to demonstrate compliance with visible emission observations of the flare. Specifically, the records submitted failed to provide sufficient information to demonstrate compliance.	
	Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate	Minor	
	Actual	Potential			
				Percent	0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent
					25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply Reduction

		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 \$2,500

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

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Union Tank Car Company
Case ID No. 36133
Reg. Ent. Reference No. RN100224575
Media Air
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

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	\$3,500	21-Apr-2008	3-Feb-2009	0.79	\$138	n/a	\$138
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

These are costs to develop and begin implementing plant procedures that include daily visible emission observations of the flare and the daily recording of the results of these observations, beginning on the date of the investigation, and ending on the projected 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

\$138

Compliance History

Customer/Respondent/Owner-Operator:	CN600126395 Union Tank Car Company	Classification: AVERAGE	Rating: 2.15																																																
Regulated Entity:	RN100224575 UNION TANK CAR CLEVELAND	Classification: AVERAGE	Site Rating: 6.86																																																
ID Number(s):	<table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">AIR OPERATING PERMITS</td> <td style="width: 30%;">ACCOUNT NUMBER</td> <td style="width: 20%;">LH0027W</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>PERMIT</td> <td>1539</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>EPA ID</td> <td>TXD091947150</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>SOLID WASTE REGISTRATION # (SWR)</td> <td>31701</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>LH0079D</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>LH0027W</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>AFS NUM</td> <td>4829100016</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>6370</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>6370A</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>6370B</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>6370C</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>31691</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>REGISTRATION</td> <td>70316</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>REGISTRATION</td> <td>70498</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>REGISTRATION</td> <td>56771</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>REGISTRATION</td> <td>84670</td> </tr> </table>			AIR OPERATING PERMITS	ACCOUNT NUMBER	LH0027W	AIR OPERATING PERMITS	PERMIT	1539	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD091947150	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31701	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	LH0079D	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	LH0027W	AIR NEW SOURCE PERMITS	AFS NUM	4829100016	AIR NEW SOURCE PERMITS	PERMIT	6370	AIR NEW SOURCE PERMITS	PERMIT	6370A	AIR NEW SOURCE PERMITS	PERMIT	6370B	AIR NEW SOURCE PERMITS	PERMIT	6370C	AIR NEW SOURCE PERMITS	PERMIT	31691	AIR NEW SOURCE PERMITS	REGISTRATION	70316	AIR NEW SOURCE PERMITS	REGISTRATION	70498	AIR NEW SOURCE PERMITS	REGISTRATION	56771	AIR NEW SOURCE PERMITS	REGISTRATION	84670
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AIR NEW SOURCE PERMITS	REGISTRATION	84670																																																	
Location:	604 COUNTY ROAD 2205, CLEVELAND, TX, 77327	Rating Date: September 01 07 Repeat Violator: NO																																																	
TCEQ Region:	REGION 12 - HOUSTON																																																		
Date Compliance History Prepared:	June 24, 2008																																																		
Agency Decision Requiring Compliance History:	Enforcement																																																		
Compliance Period:	June 24, 2003 to June 24, 2008																																																		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History																																																			
Name:	<u>Suzanne Walrath</u>	Phone:	<u>512/239-2134</u>																																																

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: 03/23/2006	ADMINORDER 2005-1541-AIR-E
Classification: Moderate	

Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: O-01539 OP

Description: Failure to submit Title V certification to the executive director no later than 30 days after the end of the certification period.

- 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 04/02/2004 (250943)
- 2 08/12/2005 (403469)
- 3 07/27/2006 (459875)
- 4 02/10/2007 (532651)
- 5 05/31/2007 (540841)
- 6 05/28/2008 (636708)
- 7 06/19/2008 (656945)

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

Date 07/27/2006 (459875)
 Self Report? NO Classification Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 Rqmt Prov: PERMIT Permit No. 6370, SC: 14, 14E
 Description: Method 25A, Section 3.6, was not followed for determination of the span value for the analyzer used in the test. Key elements required by Chapter 14 of the TCEQ Sampling and Procedures Manual for the report were missing.

Date 06/19/2008 (656945)
 Self Report? NO Classification Moderate
 Citation: 30 TAC Chapter 335, SubChapter C 335.62
 40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11
 Description: Failure to conduct a hazardous waste determination for all solid waste.
 Self Report? NO Classification Moderate
 Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)
 Description: Failure to update the Notice of Registration (NOR).

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
UNION TANK CAR COMPANY
RN100224575**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1023-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 Union Tank Car Company ("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 railcar refurbishing plant at 604 County Road 2205 in Cleveland, Liberty 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 June 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 Eleven Thousand Five Hundred Thirty Dollars (\$11,530) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Six Hundred Twelve Dollars (\$4,612) of the administrative penalty and Two Thousand Three Hundred Six Dollars (\$2,306) 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. Four Thousand Six Hundred Twelve Dollars (\$4,612) 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 recognizes that on May 14, 2008, the Respondent conducted a quarterly accuracy audit on the Regenerative Thermal Oxidizer [Emission Point No. ("EPN") 023].
 10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
 11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to conduct quarterly accuracy audits on EPN 023, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Air Permit No. 6370, Special Condition No. 8C(2), Federal Operating Permit ("FOP") No. O-01539, Special Condition No. 6, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 21, 2008. Specifically, during the investigation it was determined that the quarterly audits had not been conducted.
2. Failed to install a continuous flow monitor on the flare (EPN E011), in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), Air Permit No. 6370B, Special Condition No. 12D, FOP No. O-01539, Special Condition No. 6, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 21, 2008. Specifically, the Respondent did not have the monitor installed, which, when installed and operational, will provide a record of the vent stream flow to the flare.
3. Failed to submit semi-annual deviation reports, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B) and (C), FOP No. O-01539, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted

on April 21, 2008. Specifically, the Respondent failed to report the failure to conduct quarterly accuracy audits, and also the failure to install a continuous flow monitor on the flare as deviations on the annual compliance certification form for the certification period of October 22, 2006 through October 21, 2007, and on deviation reports for the reporting periods of October 22, 2006 through April 21, 2007, and for April 22, 2007 through October 21, 2007. The deviation reports were due no later than May 21, 2007, and November 21, 2007, respectively.

4. Failed to maintain adequate records to demonstrate compliance with visible emission observations of the flare (EPN E011), in violation of 30 TEX. ADMIN. CODE §§ 111.111(a)(4)(A)(ii), 122.143(4), FOP No. O-01539, Special Condition No. 3, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 21, 2008. Specifically, the records submitted failed to provide sufficient information to demonstrate compliance.

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: Union Tank Car Company, Docket No. 2008-1023-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, Jurisdiction and Stipulations above, Four Thousand Six Hundred Twelve Dollars (\$4,612) 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. Immediately upon the effective date of this Agreed Order, begin conducting daily visible emission observations of the flare and record the results of these observations daily;

- b. Within 30 days after the effective date of this Agreed Order, submit the deviation reports for the reporting periods of October 22, 2006 through April 21, 2007, and April 22, 2007 through October 21, 2007, and develop and begin implementing improved reporting practices, to ensure timely submission of deviation reports;
- c. Within 90 days after the effective date of this Agreed Order, install and commence operation of a continuous flow monitor on EPN E011; and
- d. Within 105 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 Nos. 3.a. through 3.c. 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 77023-1486

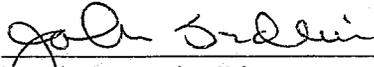
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any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



For the Executive Director

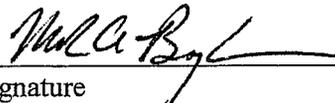
2/27/2009
Date

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

11-24-08
Date

Mark A. Baumgardner
Name (Printed or typed)
Authorized Representative of
Union Tank Car Company

Plant Manager
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.

Attachment A
Docket Number: 2008-1023-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Union Tank Car Company
Payable Penalty Amount: Nine Thousand Two Hundred Twenty-Four Dollars (\$9,224)
SEP Amount: Four Thousand Six Hundred Twelve Dollars (\$4,612)
Type of SEP: Pre-approved
Third-Party Recipient: Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program
Location of SEP: Liberty 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 Liberty 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 of 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:

Union Tank Car Company
Agreed Order - Attachment A

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.

