

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0103-AIR-E TCEQ ID: RN100234681 CASE NO.: 37052

RESPONDENT NAME: RESCAR, INC.

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: Rescar Orange Facility, 1993 Foreman Road, Orange, Orange County</p> <p>TYPE OF OPERATION: Railcar repair and painting</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is one additional pending enforcement action regarding this facility location, Docket No. 2007-1958-AIR-E.</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 May 11, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Kevin Wilck, Vice President Environmental Operations, RESCAR, INC., 407 West Brentwood Street, Channelview, Texas 77530 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 24, 2008</p> <p>Date of NOV/NOE Relating to this Case: January 13, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>AIR</p> <p>Failure to submit a semi-annual deviation report by February 27, 2008. Specifically, the semi-annual deviation report for the period July 27, 2007 through January 27, 2008 was not submitted [30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(A) and (2)(B), Federal Operating Permit No. O-1532, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$3,050</p> <p>Total Deferred: \$610 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,440</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, implement measures designed to ensure proper reporting of semi-annual deviation reports; and</p> <p>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 a.</p>

Additional ID No(s): OC0054A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	20-Jan-2009	Screening	22-Jan-2009	EPA Due	10-Oct-2009
	PCW	23-Jan-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	RESCAR, INC.
Reg. Ent. Ref. No.	RN100234681
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	37052	No. of Violations	1
Docket No.	2009-0103-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes:

Culpability Enhancement **Subtotal 4**

Notes:

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

PAYABLE PENALTY

Screening Date 22-Jan-2009

Docket No. 2009-0103-AIR-E

PCW

Respondent RESCAR, INC.

Policy Revision 2 (September 2002)

Case ID No. 37052

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100234681

Media [Statute] Air

Enf. Coordinator Thomas Greimel

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 judgments 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) 22%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one order containing a denial of liability and one NOV without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

<p>Screening Date 22-Jan-2009 Respondent RESCAR, INC. Case ID No. 37052 Reg. Ent. Reference No. RN100234681 Media [Statute] Air Enf. Coordinator Thomas Greimel Violation Number <input type="text" value="1"/> Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4), 122.145(2)(A) and (2)(B), Federal Operating Permit No. O-1532, General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b) Violation Description Failed to submit a semi-annual deviation report by February 27, 2008. Specifically, the semi-annual deviation report for the period from July 27, 2007 through January 27, 2008 was not submitted.</p>	<p>Docket No. 2009-0103-AIR-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision October 30, 2008</i></p>																							
Base Penalty <input type="text" value="\$10,000"/>																								
>> Environmental, Property and Human Health Matrix																								
<p>OR</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right; vertical-align: middle;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td></td> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>			Harm					Release	Major	Moderate	Minor			Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
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>> Programmatic Matrix																								
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td></td> <td><input type="text"/></td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right; vertical-align: middle;">Percent <input type="text" value="25%"/></td> </tr> </table> <p>Matrix Notes <input type="text" value="100% of the rule requirement was not met."/></p>		Falsification	Major	Moderate	Minor			<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>	Adjustment <input type="text" value="\$7,500"/>											
	Falsification	Major	Moderate	Minor																				
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>																			
<input type="text" value="\$2,500"/>																								
Violation Events																								
<p>Number of Violation Events <input type="text" value="1"/> Number of violation days <input type="text" value="59"/></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="7" style="vertical-align: middle;"><i>mark only one with an x</i></td> <td style="text-align: center;">daily</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">weekly</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">monthly</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">quarterly</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">semiannual</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">annual</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">single event</td> <td style="text-align: center;">x</td> </tr> </table> <p><input type="text" value="Violation Base Penalty \$2,500"/></p> <p><input type="text" value="One single event is recommended based on the documentation of the violation during the November 24, 2008 investigation."/></p>	<i>mark only one with an x</i>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x									
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	single event	x																						
Good Faith Efforts to Comply																								
<p style="text-align: right;">0.0% Reduction <input type="text" value="\$0"/></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDPRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table> <p>Notes <input type="text" value="The Respondent does not meet the good faith criteria for this violation."/></p> <p style="text-align: right;">Violation Subtotal <input type="text" value="\$2,500"/></p>		Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input type="text"/>	<input type="text"/>	N/A	x	(mark with x)												
	Before NOV	NOV to EDPRP/Settlement Offer																						
Extraordinary	<input type="text"/>	<input type="text"/>																						
Ordinary	<input type="text"/>	<input type="text"/>																						
N/A	x	(mark with x)																						
Economic Benefit (EB) for this violation																								
<p>Estimated EB Amount <input type="text" value="\$71"/></p>	<p>Statutory Limit Test</p> <p>Violation Final Penalty Total <input type="text" value="\$3,050"/></p> <p>This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,050"/></p>																							

Economic Benefit Worksheet

Respondent RESCAR, INC.
Case ID No. 37052
Reg. Ent. Reference No. RN100234681
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<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				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)	\$1,000	27-Feb-2008	31-Jul-2009	1.42	\$71	n/a	\$71

Notes for DELAYED costs
 Estimated cost of implementing measures designed to ensure proper reporting of deviation reports. Date required is the date the deviation report should have been submitted and final date is the estimated 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 \$1,000

TOTAL \$71

Compliance History Report

Customer/Respondent/Owner-Operator: CN600540751 RESCAR, INC. Classification: AVERAGE Rating: 12.28
 Regulated Entity: RN100234681 RESCAR ORANGE FACILITY Classification: POOR Site Rating: 54.86

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	OC0054A
	AIR OPERATING PERMITS	PERMIT	1532
	AIR NEW SOURCE PERMITS	PERMIT	18226
	AIR NEW SOURCE PERMITS	PERMIT	19342
	AIR NEW SOURCE PERMITS	PERMIT	39970
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	OC0054A
	AIR NEW SOURCE PERMITS	AFS NUM	4836100026
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000835215
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	32644
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000835215
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	32644

Location: 1993 FOREMAN RD, ORANGE, TX, 77630

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: January 26, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 26, 2004 to January 26, 2009

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

Name: Thomas Greimel Phone: (512) 239-5690

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
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

Effective Date: 08/31/2007 ADMINORDER 2007-0087-AIR-E
 Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A)
 30 TAC Chapter 122, SubChapter B 122.145(2)(B)
 5C THC Chapter 382, SubChapter D 382.085(b)
 Rqmt Prov: SC1A OP
 Description: Failed to submit deviation reports for the July 27, 2005 through July 26, 2006 compliance period.

Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter D 382.085(b)
 Rqmt Prov: 18226 Special Condition 9(C) PERMIT
 O-1532 Special Condition 7 OP
 Description: Failed to maintain complete records. For the July 27, 2005 through July 26, 2006 period Rescar

failed to maintain records and reports on each of the abrasive blasting facilities representing the monthly new additions of blast media and the total of new blast media additions over the calendar year for either

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 18226 Special Condition 9(D)(1) PERMIT
O-1532 Special Condition 7 OP

Description: Failed to produce monthly reports of volatile organic compound ("VOC") emissions for EPN 5. Records provided for the July 27, 2005 to July 26, 2006 period did not include records for the interior lining booths and bays ("EPN 5") for any month and no report for VOC emissions in tons per year

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 18226 Special Condition 9(D)(2) PERMIT
O-1532 Special Condition 7 OP

Description: Failed to maintain monthly reports on the coating lines. For the July 25, 2005 to July 26, 2006 period no records of adhesive usage were available, calculations were incorrect, and documentation of data, including for tons per year VOC emissions for the 12-month period was incomplete.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 19342 Special Condition 12(C) PERMIT
O-1532 Special Condition 7 OP

Description: Failed to maintain documentation and electronic records as specified on each railcar entering the facility. Rescar did not maintain such records on railcars during the July 27, 2005 through July 26, 2006 period.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 19342 Special Condition 7 PERMIT
O-1532 Special Condition 7 OP

Description: Failed to comply with daily monitoring requirements for the Carbon Absorption Unit ("CAU")

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 19342 PERMIT
O-1532 Special Condition 7 OP

Description: Failed to establish and perform a site-wide maintenance and inspection program. Rescar has no established program; additionally for the July 27, 2005 to July 27, 2006 period there are no records of visual inspections for leaks and equipment repairs.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 19342 Special Condition 12(D) PERMIT
O-1532 Special Condition 7 OP

Description: Failed to comply with the monthly reporting requirements on railcar cleaning. No monthly reports for the July 27, 2005 through July 26, 2006 period were available.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/29/2005	(400575)
2	02/22/2006	(451335)
3	01/05/2007	(533825)
4	11/27/2007	(596802)
5	04/14/2008	(641288)
6	01/13/2009	(709297)

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

Date: 11/27/2007 (596806) CN600540751

N/A

Self NO Classification Moderate

Citation: 1532 Special Condition 7 OP
19342 Special Condition 12 (A) PERMIT
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to maintain records as per SC 12(A) of Permit 19342.

Self NO Classification Moderate

Citation: 1532 Special Condition 7 OP
19342 Special Condition 7 PERMIT
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to comply with the recordkeeping requirements including monitoring and testing of the Carbon adsorption unit as stated in Special Condition 7 of Permit 19342.

Self NO Classification Moderate

Citation: 1532 Special Condition 7 OP
19342 Special Condition 9 PERMIT
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to establish and perform site-wide maintenance and inspection program including visual inspection of leaks on an annual basis.

Self NO Classification Moderate

Citation: 1532 Special Condition 7 OP
19342 Special Condition 12(D) PERMIT
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to comply with the recordkeeping requirements as stated in Special Condition 12(D) of Permit 19342.

Self NO Classification Moderate

Citation: 1532 Special Condition 7 OP
19342 Special Condition 12(C) PERMIT
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to maintain records as specified in SC12(C) of Permit 19342.

Self NO Classification Moderate

Citation: 1532 Special Condition 7 OP
18226 Special Condition 9(C) PERMIT
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to maintain monthly records regarding monthly addition of blast media.

Self NO Classification Moderate

Citation: 1532 Special Condition 7 OP
18226 Special Condition 9(D)(2) PERMIT
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to maintain monthly reports in accordance with SC 9(D)(2) of Permit 18226.

Self NO Classification Moderate

Citation: 1532 Special Condition 7 OP
18226 Special Condition 9(D)(3) PERMIT
30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to maintain monthly reports in accordance with SC 9(D)(3) of Permit

18226.

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
RESCAR, INC.
RN100234681

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0103-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 RESCAR, 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 railcar repair and painting at 1993 Foreman Road in Orange, Orange 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 January 18, 2009.
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 Three Thousand Fifty Dollars (\$3,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Four Hundred Forty Dollars (\$2,440) of the administrative penalty and Six Hundred Ten Dollars (\$610) is deferred contingent upon the Respondent's timely

and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director 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 failed to submit a semi-annual deviation report by February 27, 2008, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(A) and (2)(B), Federal Operating Permit No. O-1532, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on November 24, 2008. Specifically, the semi-annual deviation report for the period July 27, 2007 through January 27, 2008 was not submitted.

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: RESCAR, INC., Docket No. 2009-0103-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, implement measures designed to ensure proper reporting of semi-annual deviation reports, in accordance with 30 TEX. ADMIN. CODE § 122.145(2); and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification, and the report required by Ordering Provision No. 2.a., 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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

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

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Sullivan
For the Executive Director

4/17/2009
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.

Kevin H. Wilck
Signature

3/10/09
Date

Kevin Wilck
Name (Printed or typed)
Authorized Representative of
RESCAR, INC.

VP, Env. Operations
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.

