

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-0278-IWD-E **TCEQ ID:** RN102041282 **CASE NO.:** 37267
RESPONDENT NAME: Air Products LLC

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input 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 checked="" 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: Air Products La Porte Plant, 10202 Strang Road, approximately 1,500 feet northwest of the intersection of State Highway 225 and Miller Cutoff Road, bordered on the north by Strang Road, on the east by Miller Cutoff Road, on the south by the Union Pacific railroad tracks, and on the west by the Houston Light and Power right of way power lines, northwest of the City of La Porte, Harris County</p> <p>TYPE OF OPERATION: Industrial gases production facility with a wastewater treatment system</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 August 3, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Jennifer Graves, Enforcement Division, Enforcement Team 1, MC R-15, (956) 430-6023; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Jeffry Byrne, Vice President, Air Products LLC, 10202 Strang Road, La Porte, Texas 77571 Mr. David C. Hefele, West Gulf Coast Area Manager, Air Products LLC, 10202 Strang Road, La Porte, Texas 77571 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 15, 2008</p> <p>Date of NOV/NOE Relating to this Case: February 19, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with the permitted effluent limitations for total copper [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001280000, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$2,540</p> <p>Total Deferred: \$508 <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: \$2,032</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On April 3, 2008, began daily sampling of all wastewater influent to determine the source of copper into the firewater pond; and</p> <p>b. On June 26, 2008, installed a temporary storage tank to prevent the wastewater stream with the high copper concentration from being discharged through Outfall 001.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ001280000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations.</p>

Additional ID No(s): WQ0001280000



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Feb-2009	Screening	26-Feb-2009	EPA Due	
	PCW	26-Feb-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Air Products LLC
Reg. Ent. Ref. No.	RN102041282
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37267	No. of Violations	1
Docket No.	2009-0278-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jennifer Graves
		EC's Team	Enforcement Team 1
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	\$13,340
Approx. Cost of Compliance	\$95,158

*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 26-Feb-2009
Respondent Air Products LLC
Case ID No. 37267
Reg. Ent. Reference No. RN102041282
Media [Statute] Water Quality
Enf. Coordinator Jennifer Graves

Docket No. 2009-0278-IWD-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

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)	5	25%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 27%

>> 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 due to five monthly self-reported effluent violations and one NOV with unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 26-Feb-2009	Docket No. 2009-0278-IWD-E	PCW
Respondent Air Products LLC	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37267	<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN102041282		
Media [Statute] Water Quality		
Enf. Coordinator Jennifer Graves		
Violation Number 1		
Rule Cite(s)	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001280000, Effluent Limitations and Monitoring Requirements No. 1	
Violation Description	Failed to comply with the permitted effluent limitations, as shown in the attached violation table.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				Percent <input type="text" value="10%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="0%"/>

Matrix Notes
 A simplified model was used to evaluate copper to determine whether the discharged amount of pollutants exceeded levels protective of human health and the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<small>mark only one with an x</small>	daily	<input type="checkbox"/>
	weekly	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>

Violation Base Penalty

Two quarterly events are recommended.

Good Faith Efforts to Comply Reduction

	<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>

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

Violation Subtotal

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 Air Products LLC
Case ID No. 37267
Reg. Ent. Reference No. RN102041282
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$39,940	31-Dec-2007	31-Dec-2009	2.00	\$267	\$5,333	\$5,599
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$55,218	31-Dec-2007	31-Dec-2009	2.00	\$369	\$7,372	\$7,741
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

Estimated cost for temporary tank rental to collect copper-laden storm water runoff from the La Porte Truck Terminal (\$39,940). Date required is the initial month of non-compliance. Final date is the expected date by which a permanent fix will be completed. Estimated cost to re-route the storm water and truckwashing bay piping to divert the water from the La Porte Truck Terminal sump from the firewater pond to a wastewater treatment system that is designed and permitted to treat copper. Date required is the initial month of non-compliance. Final date is the estimated 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	\$95,158	TOTAL	\$13,340
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EFFLUENT VIOLATION TABLE		
Air Products LLC		
TPDES Permit No. WQ0001280000		
Docket No. 2009-0278-IWD-E		
	Total Copper Daily Avg. Conc.	Total Copper Daily Max. Conc.
Months	Limit = 0.041 mg/L	Limit = 0.088 mg/L
12/31/2007	0.043	c
2/29/2008	0.056	0.100
6/30/2008	0.060	0.190
mg/L = milligrams per liter		c = compliant
conc. = concentration		max. = maximum
avg. = average		

Compliance History Report

Customer/Respondent/Owner-Operator: CN602299257 Air Products LLC Classification: AVERAGE Rating: 2.96
Regulated Entity: RN102041282 AIR PRODUCTS LA PORTE PLANT Classification: AVERAGE Site Rating: 0.21

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG0010N
	AIR OPERATING PERMITS	PERMIT	1249
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1011569
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD059331637
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	30776
	AIR NEW SOURCE PERMITS	PERMIT	771A
	AIR NEW SOURCE PERMITS	PERMIT	3575
	AIR NEW SOURCE PERMITS	PERMIT	8937
	AIR NEW SOURCE PERMITS	PERMIT	10573
	AIR NEW SOURCE PERMITS	PERMIT	11663
	AIR NEW SOURCE PERMITS	PERMIT	11664
	AIR NEW SOURCE PERMITS	PERMIT	21878
	AIR NEW SOURCE PERMITS	PERMIT	23982
	AIR NEW SOURCE PERMITS	PERMIT	24259
	AIR NEW SOURCE PERMITS	PERMIT	24258
	AIR NEW SOURCE PERMITS	PERMIT	24786
	AIR NEW SOURCE PERMITS	PERMIT	30255
	AIR NEW SOURCE PERMITS	PERMIT	32877
	AIR NEW SOURCE PERMITS	PERMIT	33806
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG0010N
	AIR NEW SOURCE PERMITS	AFS NUM	4820100282
	AIR NEW SOURCE PERMITS	REGISTRATION	87564
	WASTEWATER	PERMIT	WQ0001280000
	WASTEWATER	PERMIT	TX0004944
	WATER LICENSING	LICENSE	1011569

Location: 10202 STRANG RD, APPRX 1,500 FT NW OF THE INTX OF ST HWY 225 AND MILLER CUTOFF RD, BORDERED ON THE NORTH BY STRANG RD, ON THE E BY MILLER CUTOFF RD, ON THE S BY THE UNION PACIFIC RR TRACKS, AND ON THE W BY THE HOUSTON LIGHT AND POWER RIGHT OF WAY POWER LINES, NW OF THE CITY OF LA PORTE, HARRIS CO, TX

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: March 11, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 24, 2004 to February 24, 2009

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

Name: Jennifer Graves Phone: 956-430-6023

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? Yes
3. If Yes, who is the current owner? Air Products and Chemicals, Inc.
Airgas - Southwest, Inc.
Air Products LLC
4. If Yes, who was/were the prior owner(s)? Air Products, L.P.
5. When did the change(s) in ownership occur? 06-27-2007
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

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

N/A

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

N/A

- C. Chronic excessive emissions events.

N/A

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

1	03/18/2004	(260857)
2	03/19/2004	(295246)
3	04/21/2004	(295247)
4	05/21/2004	(352017)
5	06/22/2004	(295252)
6	07/22/2004	(352018)
7	08/12/2004	(289571)
8	08/20/2004	(352019)
9	09/01/2004	(289810)
10	09/23/2004	(352020)
11	10/25/2004	(352021)
12	11/23/2004	(352022)
13	12/10/2004	(338899)
14	12/22/2004	(381816)
15	12/22/2004	(381817)
16	02/22/2005	(440783)
17	02/22/2005	(440784)
18	02/22/2005	(440787)
19	03/14/2005	(381815)
20	03/31/2005	(351135)
21	05/09/2005	(440785)
22	06/17/2005	(440786)
23	08/05/2005	(401051)
24	08/12/2005	(440788)
25	09/16/2005	(440789)
26	09/16/2005	(440790)
27	09/16/2005	(440791)

28 10/18/2005 (468350)
29 11/16/2005 (468351)
30 12/20/2005 (468352)
31 02/17/2006 (468346)
32 03/21/2006 (468347)
33 03/21/2006 (468348)
34 03/21/2006 (468349)
35 03/21/2006 (468353)
36 05/22/2006 (498144)
37 06/20/2006 (498145)
38 07/31/2006 (457452)
39 08/16/2006 (520154)
40 09/22/2006 (520155)
41 10/16/2006 (544433)
42 11/27/2006 (544434)
43 12/15/2006 (544435)
44 02/07/2007 (534554)
45 02/22/2007 (575203)
46 03/20/2007 (575204)
47 03/20/2007 (575208)
48 03/20/2007 (575209)
49 03/29/2007 (532617)
50 04/24/2007 (575205)
51 05/23/2007 (575206)
52 06/21/2007 (575207)
53 07/11/2007 (560599)
54 07/11/2007 (560641)
55 08/13/2007 (601576)
56 09/11/2007 (601577)
57 10/11/2007 (619486)
58 11/15/2007 (619487)
59 12/12/2007 (619488)
60 12/19/2007 (610521)
61 02/06/2008 (613281)
62 02/21/2008 (671993)
63 02/21/2008 (671994)
64 02/21/2008 (671995)
65 03/24/2008 (689910)
66 04/22/2008 (689911)
67 05/22/2008 (641391)
68 05/22/2008 (689912)
69 06/20/2008 (683613)
70 06/20/2008 (710694)
71 08/25/2008 (710695)
72 09/26/2008 (710696)
73 10/22/2008 (727453)
74 11/12/2008 (727454)
75 12/22/2008 (727455)
76 01/20/2009 (721065)
77 02/19/2009 (705535)

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

Date: 07/31/2005 (440788)

CN602299257

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2005 (440789) CN602299257
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2007 (575209) CN602299257
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 02/01/2008 (613281) CN602299257
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)
Description: Failure by the regulated entity to be under the direct supervision of a licensed water works operator at all times.

Date: 02/29/2008 (689910) CN602299257
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2008 (671994) CN602299257
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

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
AIR PRODUCTS LLC
RN102041282

§
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§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0278-IWD-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 Air Products LLC ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. 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 an industrial gases production facility with a wastewater treatment system, located at 10202 Strang Road, approximately 1,500 feet northwest of the intersection of State Highway 225 and Miller Cutoff Road, bordered on the north by Strang Road, on the east by Miller Cutoff Road, on the south by the Union Pacific railroad tracks, and on the west by the Houston Light and Power right of way power lines, northwest of the City of La Porte, in Harris County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 February 24, 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 Two Thousand Five Hundred Forty Dollars (\$2,540) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Thirty-Two Dollars (\$2,032) of the administrative penalty and Five Hundred Eight Dollars (\$508) 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 recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On April 3, 2008, began daily sampling of all wastewater influent to determine the source of copper into the firewater pond; and
 - b. On June 26, 2008, installed a temporary storage tank to prevent the wastewater stream with the high copper concentration from being discharged through Outfall 001.
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 Facility, the Respondent is alleged to have failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001280000, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on October 15, 2008, and shown in the following table:

EFFLUENT VIOLATION TABLE		
Months	Total Copper Daily Avg. Conc.	Total Copper Daily Max. Conc.
	Limit = 0.041 mg/L	Limit = 0.088 mg/L
12/31/2007	0.043	c
2/29/2008	0.056	0.100
6/30/2008	0.060	0.190
mg/L = milligrams per liter		c = compliant
conc. = concentration		max. = maximum
avg. = average		

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: Air Products LLC, Docket No. 2009-0278-IWD-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. Within 90 days after the effective date of this Agreed Order, the Respondent shall submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ001280000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my

knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1452

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 Facility 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 he 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



For the Executive Director

7/22/2009
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

6-1-09
Date

David C. Hefele
Name (Printed or typed)
Authorized Representative of
Air Products LLC

West Gulf Coast Area 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.