

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1290-AIR-E **TCEQ ID:** RN100214550 **CASE NO.:** 38126
RESPONDENT NAME: Texas Municipal Power Agency

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"/> IMMEDIATE 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: Gibbons Creek Steam Electric Station, located on Farm-to-Market Road 244, two and one half miles north of Highway 30, Carlos, Grimes County</p> <p>TYPE OF OPERATION: Electrical power 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 December 14, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Kirk Schoppe, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-0489; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Jan Horbaczewski, Mine, Land, and Environmental Manager, Texas Municipal Power Agency, P.O. Box 7000, Bryan, Texas 77805 Mr. Gary Parsons, General Manager, Texas Municipal Power Agency, P.O. Box 7000, Bryan, Texas 77805 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: June 30, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 29, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>Failure to timely submit the Permit Compliance Certification ("PCC") report. Specifically, the Respondent did not submit the PCC for the September 15, 2007 to September 14, 2008 reporting period until July 16, 2009 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit O-83, General Terms and Conditions].</p>	<p>Total Assessed: \$2,750</p> <p>Total Deferred: \$550 <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: \$2,200</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 the Respondent hired additional environmental staff to monitor and maintain compliance with reporting requirements and submitted the PCC for the period of September 15, 2007 through September 14, 2008 on July 16, 2009.</p>

Additional ID No(s): GK0012K



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	28-Jul-2009	Screening	10-Aug-2009	EPA Due	24-Apr-2010
	PCW	13-Aug-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Texas Municipal Power Agency		
Reg. Ent. Ref. No.	RN100214550		
Facility/Site Region	9-Waco	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	38126	No. of Violations	1
Docket No.	2009-1290-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Kirk Schoppe
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section			
TOTAL BASE PENALTY (Sum of violation base penalties)		Subtotal 1	\$2,500
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
Compliance History	35.0% Enhancement	Subtotals 2, 3, & 7	\$875
Notes	Penalty was enhanced due to one 1660-style order and five dissimilar NOV's and one similar NOV within the last five years.		
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	\$625
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$94	<small>*Capped at the Total EB \$ Amount</small>	
Approx. Cost of Compliance	\$2,600		
SUM OF SUBTOTALS 1-7		Final Subtotal	\$2,750
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
Notes			
		Final Penalty Amount	\$2,750
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$2,750
DEFERRAL	20.0% Reduction	Adjustment	-\$550
Notes	Deferral offered for expedited settlement.		
PAYABLE PENALTY			\$2,200

Screening Date 10-Aug-2009

Docket No. 2009-1290-AIR-E

PCW

Respondent Texas Municipal Power Agency

Policy Revision 2 (September 2002)

Case ID No. 38126

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100214550

Media [Statute] Air

Enf. Coordinator Klrk Schoppe

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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	5	10%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgments or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	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)

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

Penalty was enhanced due to one 1660-style order and five dissimilar NOVs and one similar NOV within the last five years.

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

Screening Date 10-Aug-2009	Docket No. 2009-1290-AIR-E	PCW		
Respondent Texas Municipal Power Agency	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 38126	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN100214550				
Media [Statute] Air				
Enf. Coordinator Kirk Schoppe				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	30 Tex. Admin. Code §§ 122.143(4) and 122.146(2), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit C-83, General Terms and Conditions			
Violation Description	Failed to timely submit the permit compliance certification ("PCC") report. Specifically, the Respondent did not submit the PCC for the September 15, 2007 to September 14, 2008 reporting period until July 16, 2009, as documented during an investigation conducted on June 30, 2009.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
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"/>	
OR			Percent <input type="text" value="0%"/>	
>> Programmatic Matrix				
Falsification				
Major			Moderate	Minor
<input type="text"/>			<input checked="" type="text" value="x"/>	<input type="text"/>
			Percent <input type="text" value="25%"/>	
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>			
Adjustment		<input type="text" value="\$7,500"/>		
		<input type="text" value="\$2,500"/>		
Violation Events				
Number of Violation Events <input type="text" value="1"/>		<input type="text" value="275"/> Number of violation days		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,500"/>	
	weekly	<input type="text"/>		
	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="One single event is recommended based on the failure to submit the necessary report."/>				
Good Faith Efforts to Comply		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$625"/>	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
N/A	<input type="text"/>	(mark with x)		
Notes	<input type="text" value="The Respondent returned to compliance on July 16, 2009 and the NOE is dated July 29, 2009."/>			
		Violation Subtotal	<input type="text" value="\$1,875"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$94"/>	Violation Final Penalty Total	<input type="text" value="\$2,750"/>	
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$2,750"/>	

Economic Benefit Worksheet

Respondent Texas Municipal Power Agency
Case ID No. 38128
Reg. Ent. Reference No. RN100214550
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	16

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$2,500	14-Oct-2008	16-Jul-2009	0.75	\$94	n/a	\$94
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 of preparation and submittal of a permit compliance certification and the addition of environmental personnel to ensure future compliance. The date required is the date the report should have been submitted. The final date is the date the report was received.

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 \$94

Compliance History Report

Customer/Respondent/Owner-Operator: CN600127567 Texas Municipal Power Agency Classification: AVERAGE Rating: 7.94
 Regulated Entity: RN100214550 GIBBONS CREEK STEAM ELECTRIC STATION Classification: AVERAGE Site Rating: 0.24

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	GK0012K
	AIR OPERATING PERMITS	PERMIT	83
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000751073
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	32271
	AIR NEW SOURCE PERMITS	PERMIT	5698
	AIR NEW SOURCE PERMITS	PERMIT	5699
	AIR NEW SOURCE PERMITS	PERMIT	8878
	AIR NEW SOURCE PERMITS	PERMIT	11057
	AIR NEW SOURCE PERMITS	PERMIT	24051
	AIR NEW SOURCE PERMITS	PERMIT	25418
	AIR NEW SOURCE PERMITS	PERMIT	29528
	AIR NEW SOURCE PERMITS	PERMIT	31455
	AIR NEW SOURCE PERMITS	PERMIT	45759
	AIR NEW SOURCE PERMITS	PERMIT	47141
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	GK0012K
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX18M1
	AIR NEW SOURCE PERMITS	AFS NUM	4818500002
	AIR NEW SOURCE PERMITS	REGISTRATION	89088
	AIR NEW SOURCE PERMITS	REGISTRATION	89432
	AIR NEW SOURCE PERMITS	PERMIT	25006
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	0930040
	STORMWATER	PERMIT	TXR05N854
	WATER LICENSING	LICENSE	0930040

Location: FM 244 2.5 MI N OF HWY 30

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: August 10, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 10, 2004 to August 10, 2009

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

Name: Kirk Schoppe Phone: 239 - 0489

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A

4. if Yes, who was/were the prior owner(s)/operator(s) ?

N/A

5. When did the change(s) in owner or operator 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.

Effective Date: 05/28/2006 ADMINORDER 2006-0064-PWS-E
N/A
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Failed to comply with the MCL of 0.060 mg/L for HAA5, based on a running annual average.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Failed to comply with the MCL of 0.060 mg/L for HAA5, based on a running annual average.

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	09/28/2004	(291794)
N/A	2	11/02/2004	(339222)
	3	11/05/2004	(340091)
	4	12/22/2004	(344674)
	5	12/22/2004	(344677)
	6	12/23/2004	(345187)
	7	01/07/2005	(344679)
	8	02/11/2005	(350638)
	9	03/10/2005	(373844)
	10	04/04/2005	(376446)
	11	05/13/2005	(378403)
	12	05/16/2005	(378702)
	13	05/16/2005	(380972)
	14	05/16/2005	(381008)
	15	06/17/2005	(395820)
	16	06/27/2005	(396200)
	17	08/02/2005	(400664)
	18	09/27/2005	(405902)
	19	09/28/2005	(431189)
	20	10/05/2005	(432893)
	21	10/05/2005	(432906)
	22	12/06/2005	(439363)
	23	12/07/2005	(439291)
	24	12/20/2005	(435599)
	25	01/09/2006	(451466)
	26	03/10/2006	(451250)
	27	03/16/2006	(458452)

28	04/19/2006	(462615)
29	04/20/2006	(463364)
30	05/02/2006	(464382)
31	06/13/2006	(482542)
32	07/12/2006	(486090)
33	08/31/2006	(464409)
34	08/31/2006	(481467)
35	09/08/2006	(510914)
36	09/08/2006	(511535)
37	09/14/2006	(511809)
38	09/26/2006	(514092)
39	11/10/2006	(519251)
40	03/09/2007	(512699)
41	03/27/2007	(543375)
42	04/25/2007	(556299)
43	04/30/2007	(556307)
44	05/01/2007	(557662)
45	05/09/2007	(558707)
46	05/17/2007	(560333)
47	06/20/2007	(564903)
48	07/17/2007	(567688)
49	09/26/2007	(595867)
50	10/22/2007	(597207)

51	12/03/2007	(609685)
52	01/03/2008	(612918)
53	01/07/2008	(613472)
54	03/07/2008	(636561)
55	03/25/2008	(617136)
56	04/11/2008	(640883)
57	04/16/2008	(641083)
58	06/02/2008	(671573)
59	06/05/2008	(682075)
60	06/11/2008	(671653)
61	08/12/2008	(687456)
62	08/15/2008	(689059)
63	09/02/2008	(688255)
64	09/02/2008	(689058)
65	11/12/2008	(707498)
66	12/01/2008	(707774)
67	01/16/2009	(723629)
68	01/26/2009	(724596)
69	02/18/2009	(721516)
70	03/06/2009	(727065)
71	03/06/2009	(736708)
72	04/03/2009	(738556)
73	04/03/2009	(738832)
74	04/03/2009	(739981)
75	05/08/2009	(741974)
76	07/15/2009	(742402)
77	07/16/2009	(748896)
78	07/27/2009	(761716)
79	07/27/2009	(761717)
80	07/27/2009	(762933)
81	07/27/2009	(762966)
82	07/28/2009	(760693)

Date: 06/28/2005 (396200)
N/A Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter F 101.222(d)(2)
Description: Failure to prevent an excess opacity event.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(1)(B)
Description: Failure to prevent opacity from exceeding the 20 percent allowable for Boiler Unit # 1.

Date: 02/24/2006 (451250)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)
Description: Failure to properly seal the overflow pipe of the elevated tank.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)
Description: Failure to provide the roof hatch with a gasket to form a positive seal, in order to prevent insects and other possible contaminants from entering the water supply.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(4)
Description: Failure to maintain distribution system lines, water storage and pressure maintenance facilities, and related appurtenances in a watertight condition and be free of excessive solids.
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(1)
Description: Failure to provide a water purchase contract.

Date: 03/09/2007 (543375)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter F 101.222(d)(3)
Description: Failure to prevent an opacity event due to operator error.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
Description: Failure to comply with Special Condition No. 2 of Permit No. 5699.

Date: 03/07/2008 (617136)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
5C THSC Chapter 382 382.085(b)
Description: Failure to comply with 30 TAC Chapter 116, Rule 116.115 (b)(2)(F).

Date: 09/03/2008 (688255)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.145(2)(A)
5C THSC Chapter 382 382.085(b)
Description: Failure to report three CO lbs/hr deviations during the March 15, 2007, through September 14, 2007, deviation reporting period.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
30 TAC Chapter 122, SubChapter B 122.143(4)
5699 PERMIT
5C THSC Chapter 382 382.085(b)
Description: Failure to prevent 16 hours of CO emissions by exceeding the 600 lbs/hr CO limit stated in the MAERT of NSR Permit No. 5699.

Date: 07/15/2009 (742402)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter F 101.222(d)(3)
30 TAC Chapter 111, SubChapter A 111.111(a)(1)(B)
30 TAC Chapter 116, SubChapter B 116.115(c)

30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)

Description: Failure to meet an affirmative defense as provided by Title 30 Texas
Administrative Code (TAC) 101.222(d)(3) and failure to comply with 30 TAC
111.111 (a)(1)(B), 30 TAC 116.115(c), and 30 TAC 122.143(4).

F. Environmental audits.

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
TEXAS MUNICIPAL POWER
AGENCY
RN100214550

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1290-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 Texas Municipal Power Agency ("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 an electrical power plant on Farm-to-Market Road 244, two and one-half miles north of Highway 30 in Carlos, Grimes County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 3, 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 Seven Hundred Fifty Dollars (\$2,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Two Hundred Dollars (\$2,200) of the

administrative penalty and Five Hundred Fifty Dollars (\$550) 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 hired additional environmental staff to monitor and maintain compliance with reporting requirements and submitted the Permit Compliance Certification ("PCC") for the period of September 15, 2007 through September 14, 2008 on July 16, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to timely submit the PCC report, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit O-83, General Terms and Conditions, as documented during an investigation conducted on June 30, 2009. Specifically, the Respondent did not submit the PCC for the September 15, 2007 to September 14, 2008 reporting period until July 16, 2009.

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: Texas Municipal Power Agency, Docket No. 2009-1290-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. ...
For the Executive Director

11/13/2009
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.

Gary Parsons
Signature

10/7/09
Date

GARY PARSONS
Name (Printed or typed)
Authorized Representative of
Texas Municipal Power Agency

General 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 I of this Agreed Order.