

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2009-1513-AIR-E TCEQ ID: RN100225804 CASE NO.: 38381**  
**RESPONDENT NAME: Trinity Tank Car, Inc.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Trinity Tank Car Plant 192, 104 East Bailey Boswell Road, Saginaw, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Railroad tank car manufacturing plant</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on January 4, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. James Nolan, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6634; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. David West, Regional Environmental Manager, Trinity Tank Car, Inc., P.O. Box 568887, Dallas, Texas 75356  Mr. S. Theis Rice, Vice President, Trinity Tank Car, Inc., P.O. Box 568887, Dallas, Texas 75356  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 16, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 31, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>Failure to submit an annual compliance certification within 30 days of the end of the certification period. Specifically, the Respondent failed to submit the annual compliance certification for the May 22, 2007 through May 21, 2008 reporting period until July 31, 2008 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), Federal Operating Permit No. O-1658 General Terms and Conditions, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$1,875</p> <p><b>Total Deferred:</b> \$375  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,500</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on July 31, 2008, the Respondent submitted the annual compliance certification for the May 22, 2007 through May 21, 2008 reporting period.</p>

Additional ID No(s): TA0499A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>TCEQ</b>	<b>DATES</b>	Assigned	8-Sep-2009	Screening	14-Sep-2009	EPA Due	5-Jun-2010
		PCW	21-Sep-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Trinity Tank Car, Inc.		
Reg. Ent. Ref. No.	RN100225804		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38381	No. of Violations	1
Docket No.	2009-1513-A1R-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	James Nolan
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$2,500</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No penalty adjustment due to compliance history.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$625</b>
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<b>Economic Benefit</b>	0.0% Enhancement	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$1  
Approx. Cost of Compliance: \$250  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$1,875</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$1,875</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$1,875</b>
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	<b>-\$375</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$1,500</b>
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Screening Date 14-Sep-2009

Docket No. 2009-1513-AIR-E

PCW

Respondent Trinity Tank Car, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38381

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN100225804

Media [Statute] Air

Enf. Coordinator James Nolan

## Compliance History Worksheet

## &gt;&gt; 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	0	0%
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%
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) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No penalty adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 14-Sep-2009	<b>Docket No.</b> 2009-1513-AIR-E																			
<b>Respondent</b> Trinity Tank Car, Inc.	<b>PCW</b> <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small>																			
<b>Case ID No.</b> 38381																				
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<b>Enf. Coordinator</b> James Nolan																				
<b>Violation Number</b> 1																				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 122.143(4) and 122.146(2), Federal Operating Permit No. O-1658 General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b)																			
<b>Violation Description</b>	Failed to submit an annual compliance certification within 30 days of the end of the certification period. Specifically, the Respondent failed to submit the annual compliance certification for the May 22, 2007 through May 21, 2008 reporting period until July 31, 2008.																			
<b>Base Penalty</b>	\$10,000																			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																				
<b>OR</b>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td><b>Release</b></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> <td rowspan="2" style="text-align: right;"><b>Percent</b> 0%</td> </tr> <tr> <td>Potential</td> <td></td> <td></td> <td></td> </tr> </table>		Harm				<b>Release</b>	Major	Moderate	Minor		Actual				<b>Percent</b> 0%	Potential			
		Harm																		
<b>Release</b>	Major	Moderate	Minor																	
Actual				<b>Percent</b> 0%																
Potential																				
<b>&gt;&gt; Programmatic Matrix</b>																				
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">x</td> <td></td> <td></td> <td rowspan="2" style="text-align: right;"><b>Percent</b> 25%</td> </tr> </table>		Falsification	Major	Moderate	Minor				x			<b>Percent</b> 25%							
	Falsification	Major	Moderate	Minor																
		x			<b>Percent</b> 25%															
<b>Matrix Notes</b>	100% of the rule requirement was not met.																			
<b>Adjustment</b>	\$7,500																			
<b>\$2,500</b>																				
<b>Violation Events</b>																				
<b>Number of Violation Events</b>	1																			
<b>Number of violation days</b>	41																			
<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily		weekly		monthly		quarterly		semiannual		annual		single event	x	<b>Violation Base Penalty</b> \$2,500					
daily																				
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semiannual																				
annual																				
single event	x																			
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">One single event is recommended for the late report.</div>																				
<b>Good Faith Efforts to Comply</b>																				
<b>25.0% Reduction</b>	<b>\$825</b>																			
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Before NOV</th> <th>NOV to EDPRP/Settlement Offer</th> </tr> <tr> <td>Extraordinary</td> <td></td> <td></td> </tr> <tr> <td>Ordinary</td> <td style="text-align: center;">x</td> <td></td> </tr> <tr> <td>N/A</td> <td></td> <td style="text-align: center;">(mark with x)</td> </tr> </table>		Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary			Ordinary	x		N/A		(mark with x)							
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Extraordinary																				
Ordinary	x																			
N/A		(mark with x)																		
<b>Notes</b>	The annual compliance certification was received July 31, 2008.																			
<b>Violation Subtotal</b>	\$1,875																			
<b>Economic Benefit (EB) for this violation</b>																				
<b>Estimated EB Amount</b>	\$1																			
<b>Statutory Limit Test</b>																				
<b>Violation Final Penalty Total</b>	\$1,875																			
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$1,875																				

## Economic Benefit Worksheet

**Respondent:** Trinity Tank Car, Inc.  
**Case ID No.:** 38381  
**Reg. Ent. Reference No.:** RN100225804  
**Media:** Air  
**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**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)	\$250	20-Jun-2008	31-Jul-2008	0.11	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost for additional oversight to ensure the proper preparation and submittal of annual compliance certification reports. The date required is the date the report should have been submitted and the final date is the 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

\$250

**TOTAL**

\$1

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN601657091 Trinity Tank Car, Inc.	Classification: AVERAGE	Rating: 0.49																																							
Regulated Entity:	RN100225804 TRINITY TANK CAR PLANT 192	Classification: HIGH	Site Rating: 0.00																																							
ID Number(s):	<table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">AIR OPERATING PERMITS</td> <td style="width: 20%;">ACCOUNT NUMBER</td> <td style="width: 30%;">TA0499A</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>PERMIT</td> <td>1658</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>PERMIT</td> <td>1650</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>ACCOUNT NUMBER</td> <td>TA0499A</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>ACCOUNT NUMBER</td> <td>TA0285V</td> </tr> <tr> <td>PETROLEUM STORAGE TANK REGISTRATION</td> <td>REGISTRATION</td> <td>47620</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>6832A</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>TA0499A</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>AFS NUM</td> <td>4843900144</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>EPA ID</td> <td>TXD094263399</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>SOLID WASTE REGISTRATION # (SWR)</td> <td>32104</td> </tr> <tr> <td>STORMWATER</td> <td>PERMIT</td> <td>TXR05U961</td> </tr> <tr> <td>AIR EMISSIONS INVENTORY</td> <td>ACCOUNT NUMBER</td> <td>TA0499A</td> </tr> </table>			AIR OPERATING PERMITS	ACCOUNT NUMBER	TA0499A	AIR OPERATING PERMITS	PERMIT	1658	AIR OPERATING PERMITS	PERMIT	1650	AIR OPERATING PERMITS	ACCOUNT NUMBER	TA0499A	AIR OPERATING PERMITS	ACCOUNT NUMBER	TA0285V	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	47620	AIR NEW SOURCE PERMITS	PERMIT	6832A	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	TA0499A	AIR NEW SOURCE PERMITS	AFS NUM	4843900144	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD094263399	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	32104	STORMWATER	PERMIT	TXR05U961	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	TA0499A
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Location:	104 E BAILEY BOSWELL RD, SAGINAW, TX, 76179																																									
TCEQ Region:	REGION 04 - DFW METROPLEX																																									
Date Compliance History Prepared:	October 19, 2009																																									
Agency Decision Requiring Compliance History:	Enforcement																																									
Compliance Period:	September 14, 2004 to September 14, 2009																																									

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

Name: James Nolan Phone: (512) 239-6634

## 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: 9/1/2009 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

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	06/02/2005	(401701)
2	06/17/2006	(497326)
3	11/02/2006	(516337)
4	10/23/2007	(598867)
5	11/02/2007	(599802)
6	08/31/2009	(767222)

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

N/A

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  
TRINITY TANK CAR, INC.  
RN100225804

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

AGREED ORDER  
DOCKET NO. 2009-1513-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 Trinity Tank Car, 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 railroad tank car manufacturing plant at 104 East Bailey Boswell Road in Saginaw, Tarrant 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 September 5, 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 One Thousand Eight Hundred Seventy-Five Dollars (\$1,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Dollars (\$1,500) of the administrative penalty and Three Hundred Seventy-Five Dollars (\$375) 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 on July 31, 2008, the Respondent submitted the annual compliance certification for the May 22, 2007 through May 21, 2008 reporting period.
  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 submit an annual compliance certification within 30 days of the end of the certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), Federal Operating Permit No. O-1658 General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 16, 2009. Specifically, the Respondent failed to submit the annual compliance certification for the May 22, 2007 through May 21, 2008 reporting period until July 31, 2008.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Trinity Tank Car, Inc., Docket No. 2009-1513-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 Sullivan  
\_\_\_\_\_  
For the Executive Director

12/11/2009  
\_\_\_\_\_  
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.

S. Theis Rice  
\_\_\_\_\_  
Signature

10.28.09  
\_\_\_\_\_  
Date

S. Theis Rice  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Trinity Tank Car, Inc.

Vice President  
\_\_\_\_\_  
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.