

EXECUTIVE SUMMARY - ENFORCEMENT MATTER**DOCKET NO.:** 2010-0339-AIR-E **TCEQ ID:** RN102952983 **CASE NO.:** 39241**RESPONDENT NAME:** FAVELLE FAVCO CRANES USA, 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: FAVELLE FAVCO CRANES, USA, INC., 26360 Farm-to-Market Road 106, Harlingen, Cameron County</p> <p>TYPE OF OPERATION: Machinery manufacturing facility</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 16, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Audra Benoit, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8799; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Michael Khoo, General Manager, FAVELLE FAVCO CRANES USA, INC., 26360 Farm-to-Market Road 106, Harlingen, Texas 78550 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: November 5, 2009</p> <p>Date of NOV/NOE Relating to this Case: February 26, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>1) Failure to maintain records sufficient to demonstrate compliance with all applicable permit-by-rule conditions. Specifically, the Respondent did not document the pounds of media used during the hours of operation on January 29 and 30, 2009, April 30, 2009, July 30, 2009 and August 27, 2009, and therefore could not demonstrate compliance with the one ton per day limit [30 TEX. ADMIN. CODE § 106.8(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to comply with outside blast cleaning abrasive usage rate of 150 tons per year ("tpy"). Specifically, the total amount of abrasive used from January 1, 2009 through September 26, 2009, exceeded the 150 tpy limit by 8.76 tpy. Additionally, there were eight months that exceeded the 15 ton per month limit from January 2009 to September 2009, and 107 days which exceeded the one ton per day limit [30 TEX. ADMIN. CODE § 106.452(2)(A), TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit-By-Rule No. 74116].</p>	<p>Total Assessed: \$3,345</p> <p>Total Deferred: \$669 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$1,338</p> <p>Total Paid to General Revenue: \$1,338</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 on November 5, 2009, the Respondent has replaced the Number 4 nozzle with a Number 2 nozzle for the sand blasting operation to ensure that the permit-by-rule conditions are met.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, implement measures designed to ensure proper record keeping; 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): Air Account No. 74116

Attachment A
Docket Number: 2010-0339-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: FAVELLE FAVCO CRANES USA, INC.
Payable Penalty Amount: Two Thousand Six Hundred Seventy-Six Dollars (\$2,676)
SEP Amount: One Thousand Three Hundred Thirty-Eight Dollars (\$1,338)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up
Location of SEP: Cameron County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Abandoned Tire Clean-Up Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	1-Mar-2010			
	PCW	15-Mar-2010	Screening	2-Mar-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	FAVELLE FAVCO CRANES USA, INC.				
Reg. Ent. Ref. No.	RN102952983				
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	39241	No. of Violations	2		
Docket No.	2010-0339-AIR-E	Order Type	1660		
Media Program(s)	Air	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Audra Benoit		
		EC's Team	Enforcement Team 5		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	17.0% Enhancement	Subtotals 2, 3, & 7	\$595
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Notes
Penalty enhancement due to one same or similar NOV, one non-similar NOV and one order containing a denial of liability. Penalty reduction due to voluntary on-site compliance assessment.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$750
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$88
Approx. Cost of Compliance	\$1,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,345
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$3,345
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,345
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DEFERRAL	20.0% Reduction	Adjustment	-\$669
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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.

PAYABLE PENALTY	\$2,676
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Screening Date 2-Mar-2010

Docket No. 2010-0339-AIR-E

PCW

Respondent FAVELLE FAVCO CRANES USA, INC.

Policy Revision 2 (September 2002)

Case ID No. 39241

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102952983

Media [Statute] Air

Enf. Coordinator Audra Benoit

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)	1	5%
	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 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	Yes	-10%
	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) 17%

>> 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

Penalty enhancement due to one same or similar NOV, one non-similar NOV and one order containing a denial of liability. Penalty reduction due to voluntary on-site compliance assessment.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 17%

Screening Date 2-Mar-2010

Docket No. 2010-0339-AIR-E

PCW

Respondent FAVELLE FAVCO CRANES USA, INC.

Policy Revision 2 (September 2002)

Case ID No. 39241

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102952983

Media [Statute] Air

Enf. Coordinator Audra Benoit

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 106.8(c)(2)(B) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain records sufficient to demonstrate compliance with all applicable permit-by-rule conditions. Specifically, the Respondent did not document the pounds of media used during the hours of operation on January 29 and 30, 2009, April 30, 2009, July 30, 2009 and August 27, 2009, and therefore could not demonstrate compliance with the one ton per day limit.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification			Percent
	Major	Moderate	Minor	
At least 70% of the rule requirement was met.			x	1%

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 5 Number of violation days 210

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

Five single events are recommended based on the five days of missing records.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$82

Violation Final Penalty Total \$585

This violation Final Assessed Penalty (adjusted for limits) \$585

Economic Benefit Worksheet

Respondent: FAVELLE FAVCO CRANES USA, INC.
Case ID No.: 39241
Reg. Ent. Reference No.: RN102952983
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
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$1,000	29-Jan-2009	17-Sep-2010	1.63	\$82	n/a	\$82
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 to implement measures designed to ensure proper record keeping. The date required is the date of the first missing records. The 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	\$1,000	TOTAL	\$82
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Screening Date 2-Mar-2010

Docket No. 2010-0339-AIR-E

PCW

Respondent FAVELLE FAVCO CRANES USA, INC.

Policy Revision 2 (September 2002)

Case ID No. 39241

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102952983

Media [Statute] Air

Enf. Coordinator Audra Benoit

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 106.452(2)(A), Tex. Health & Safety Code § 382.085(b), and Permit-By-Rule No. 74116

Violation Description Failed to comply with outside blast cleaning abrasive usage rate of 150 tons per year ("tpy"). Specifically, the total amount of abrasive used from January 1, 2009 through September 26, 2009 exceeded the 150 tpy limit by 8.76 tpy. Additionally, there were eight months that exceeded the 15 ton per month limit from January 2009 to September 2009, and 107 days which exceeded the one ton per day limit.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual				x	10%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes 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 as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 272 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,000

Three quarterly events are recommended based on the exceeded limits from January 2009 to September 2009.

Good Faith Efforts to Comply

25.0% Reduction

\$750

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent completed corrective actions for this violation on November 5, 2009, prior to the February 26, 2010 NOE date.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$2,760

This violation Final Assessed Penalty (adjusted for limits) \$2,760

Economic Benefit Worksheet

Respondent FAVELLE FAVCO CRANES USA, INC.

Case ID No. 39241

Reg. Ent. Reference No. RN102952983

Media Air

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$100	1-Jan-2009	5-Nov-2009	0.84	\$0	\$6	\$6
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to replace the Number 4 nozzle with the Number 2 nozzle for the sand blasting operation to ensure that the permit-by-rule conditions are met. The date required is the first date of non-compliance. The final date is the date of compliance.

Avoided Costs

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

	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

\$100

TOTAL

\$6

Compliance History Report

Customer/Respondent/Owner-Operator: CN601534175 FAVELLE FAVCO CRANES USA, INC. Classification: AVERAGE Rating: 6.40
Regulated Entity: RN102952983 FAVELLE FAVCO CRANES USA, INC. Classification: AVERAGE Site Rating: 6.40

ID Number(s): STORMWATER PERMIT TXR05W625
AIR NEW SOURCE PERMITS REGISTRATION 72677
AIR NEW SOURCE PERMITS REGISTRATION 74116
Location: 26360 FM 106, HARLINGEN, TX, 78550
TCEQ Region: REGION 15 - HARLINGEN

Date Compliance History Prepared: March 02, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 02, 2005 to March 02, 2010

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

Name: Audra Benoit Phone: (409) 899-8799

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.

Effective Date: 03/12/2009

ADMINORDER 2008-1300-MLM-E

Classification: Moderate

Citation: 30 TAC Chapter 106, SubChapter S 106.433(6)(C)

5C THSC Chapter 382 382.085(b)

Rqmt Prov: 106.433(6)(A) PERMIT

Description: Failed to comply with the paint booth's pounds per hour emissions limit. Specifically, the NSRPBRR limits volatile organic compound ("VOC") emissions to six pounds per hour, averaged over any five-hour period, and the Respondent exceeded that limit on August 8, October 24, December 7, and December 18, 2007. VOC pounds per hour emissions on those dates were 6.8, 9.2, 6.5, and 6.5, respectively.

Classification: Minor

Citation: 30 TAC Chapter 106, SubChapter A 106.8(c)(2)(B)

5C THSC Chapter 382 382.085(b)

Rqmt Prov: 30 TAC §106.8(c)(2)(B) PERMIT

Description: Failed to maintain sufficient records to demonstrate compliance with the NSRPBRR. Specifically, the Respondent's records for November 22, 2007 contain contradictory data that shows 16 pounds of VOC per gallon of epoxy were used on that day; however, no epoxy was used that day.

Classification: Moderate

Citation: 30 TAC Chapter 106, SubChapter S 106.433(6)(C)

5C THSC Chapter 382 382.085(b)

Rqmt Prov: PBR Reg #72677 30 TAC §106.433(6)(C) PERMIT

Description: Failed to use a filter with a manufacturer-documented minimal 95% removal efficiency to abate emissions from paint spraying operations. Specifically, the Respondent was using a 3M Ultra Allergen 1250 filter rated at only 90% removal efficiency.

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: TPDES MSGP TXR050000, PERMIT

Description: Failed to have a SWP3 onsite and readily available for review.

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: TPDES MSGP TXR050000, PERMIT

Description: Failed to clearly label drums, tanks, or other containers. Specifically, several drums in the container storage area were not labeled.

Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: TPDES MSGP TXR050000 PERMIT

Description: Failed to make materials and equipment necessary for spill clean up available to personnel.

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	03/03/2005	(372809)
2	04/18/2005	(377326)
3	04/20/2005	(378149)
4	06/30/2005	(397490)
5	06/30/2005	(397494)
6	08/19/2005	(400387)
7	08/19/2005	(405979)
8	11/30/2005	(438682)
9	01/30/2006	(453410)
10	03/21/2006	(459653)
11	05/31/2006	(480466)
12	08/16/2007	(511152)
13	10/04/2007	(596352)
14	10/16/2007	(597725)
15	10/24/2007	(598775)
16	10/24/2007	(598922)
17	07/21/2008	(682644)
18	07/21/2008	(682948)
19	09/29/2008	(703982)
20	03/20/2009	(739218)
21	05/29/2009	(745464)
22	02/26/2010	(783251)

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

Date: 08/17/2007 (511152)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 106, SubChapter T 106.452(2)(A)

Description: Failure to operate the outside blasting operation within the requirements where the daily usage for the operation does not exceed one ton per day, the monthly usage for the operation does not exceed 15 tons per month, and the total annual usage for the operation does not exceed 150 tons.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 106, SubChapter A 106.8(c)(2)(B)
Description: Failure to maintain records to contain sufficient information to demonstrate compliance in all appropriate PBR conditions.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 106, SubChapter S 106.433(6)(A)
Description: Failure to operate the paint booth within the required limits of six lbs/hr of VOC emissions averaged over any five hour period.

Date: 10/12/2007 (597725)

Self Report? NO Classification: Major
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Failure to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit, the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

08/11/2008

08/11/2008

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
FAVELLE FAVCO CRANES USA,
INC.
RN102952983

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-0339-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 FAVELLE FAVCO CRANES USA, 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 machinery manufacturing facility at 26360 Farm-to-Market Road 106 in Harlingen, Cameron 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 March 3, 2010.
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 Three Hundred Forty-Five Dollars (\$3,345) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid One Thousand Three Hundred Thirty-Eight Dollars (\$1,338) of the administrative penalty and Six Hundred Sixty-Nine Dollars (\$669) 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. One Thousand Three Hundred Thirty-Eight Dollars (\$1,338) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on November 5, 2009, the Respondent has replaced the Number 4 nozzle with a Number 2 nozzle for the sand blasting operation to ensure that the permit-by-rule conditions are met.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to maintain records sufficient to demonstrate compliance with all applicable permit-by-rule conditions, in violation of 30 TEX. ADMIN. CODE § 106.8(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 5, 2009. Specifically, the Respondent did not document the pounds of media used during the hours of operation on January 29 and 30, 2009, April 30, 2009, July 30, 2009 and August 27, 2009, and therefore could not demonstrate compliance with the one ton per day limit.
2. Failed to comply with outside blast cleaning abrasive usage rate of 150 tons per year ("tpy"), in violation of 30 TEX. ADMIN. CODE § 106.452(2)(A), TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit-By-Rule No. 74116, as documented during an investigation conducted on November 5, 2009. Specifically, the total amount of abrasive used from January 1, 2009 through September 26, 2009, exceeded the 150 tpy limit by 8.76 tpy. Additionally, there were eight months that

exceeded the 15 ton per month limit from January 2009 to September 2009, and 107 days which exceeded the one ton per day limit.

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: FAVELLE FAVCO CRANES USA, INC., Docket No. 2010-0339-AIR-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, One Thousand Three Hundred Thirty-Eight Dollars (\$1,338) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement measures designed to ensure proper record keeping in accordance with 30 TEX. ADMIN. CODE § 106.8(c)(2)(B); 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. 3.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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Air Section, Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This 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.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the

FAVELLE FAVCO CRANES USA, INC.

DOCKET NO. 2010-0339-AIR-E

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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 Zoller
For the Executive Director

8/25/2010
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.

Michael Khoo
Signature

5/24/2010
Date

Michael Khoo
Name (Printed or typed)
Authorized Representative of
FAVELLE FAVCO CRANES USA, INC.

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 1 of this Agreed Order.

Attachment A
Docket Number: 2010-0339-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: FAVELLE FAVCO CRANES USA, INC.
Payable Penalty Amount: Two Thousand Six Hundred Seventy-Six Dollars (\$2,676)
SEP Amount: One Thousand Three Hundred Thirty-Eight Dollars (\$1,338)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up
Location of SEP: Cameron County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Abandoned Tire Clean-Up Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

