

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2010-1006-IWD-E **TCEQ ID:** RN100885102 **CASE NO.:** 39905
RESPONDENT NAME: SHIN-ETSU SILICONES OF AMERICA, INC.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Carbon Functional Silanes Facility, at a point equidistant between Chubb Lake and the portion of the railroad tracks running southeast of Chubb Lake, approximately one mile west of the Village of Oyster Creek and approximately 2.5 miles north of Freeport, Brazoria County</p> <p>TYPE OF OPERATION: Organic chemical manufacturing 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 October 18, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. JR Cao, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2543; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Jun Hamuro, President, SHIN-ETSU SILICONES OF AMERICA, INC., 5650 East Highway 332, Freeport, Texas 77541 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 2, 2010</p> <p>Date of NOV/NOE Relating to this Case: June 2, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>WATER</p> <p>Failure to comply with permitted effluent limitations for five-day biochemical oxygen demand and pH [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004362000, Effluent Limitations and Monitoring Requirements Nos. 1 and 2].</p>	<p>Total Assessed: \$24,875</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$24,875</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>Findings Orders Justification:</p> <p>Human health or the environment has been exposed to pollutants which exceed levels that are protective.</p>	<p>Ordering Provisions:</p> <p>Within 90 days after the effective date of this Agreed Order, the Respondent shall submit written certification of compliance with the permitted effluent limits of TPDES Permit No. WQ0004362000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limits. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with this Ordering Provision.</p>

Additional ID No(s): WQ0004362000



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	7-Jun-2010	Screening	18-Jun-2010	EPA Due	5-Sep-2010
	PCW	18-Jun-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	SHIN-ETSU SILICONES OF AMERICA, INC.
Reg. Ent. Ref. No.	RN100885102
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	39905	No. of Violations	2
Docket No.	2010-1006-IWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	JR Cao
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section	
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 \$12,500
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	99.0% Enhancement Subtotals 2, 3, & 7 \$12,375
Notes	An enhancement is recommended due to one NOV with violations similar to those cited in this action, 14 months of self-reported effluent violations, two NOVs with non-similar violations, and one final agreed order containing a denial of liability.
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 \$0
Economic Benefit	0.0% Enhancement* Subtotal 6 \$0
Total EB Amounts	\$391
Approx. Cost of Compliance	\$5,000
	*Capped at the Total EB \$ Amount
SUM OF SUBTOTALS 1-7	Final Subtotal \$24,875
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment \$0
Notes	
	Final Penalty Amount \$24,875
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty \$24,875
DEFERRAL	0.0% Reduction Adjustment \$0
Notes	No deferral is recommended for Findings Orders.
PAYABLE PENALTY	\$24,875

Screening Date 18-Jun-2010

Docket No. 2010-1006-IWD-E

PCW

Respondent SHIN-ETSU SILICONES OF AMERICA, INC.

Policy Revision 2 (September 2002)

Case ID No. 39905

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100885102

Media [Statute] Water Quality

Enf. Coordinator JR Cao

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)	15	75%
	Other written NOVs	2	4%
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	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) 99%

>> 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

An enhancement is recommended due to one NOV with violations similar to those cited in this action, 14 months of self-reported effluent violations, two NOVs with non-similar violations, and one final agreed order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 99%

Screening Date 18-Jun-2010

Docket No. 2010-1006-IWD-E

PCW

Respondent SHIN-ETSU SILICONES OF AMERICA, INC.

Policy Revision 2 (September 2002)

Case ID No. 39905

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100865102

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.126(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004382000, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limitations, as documented in a record review on May 2, 2010, and as shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			100%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors.

Adjustment \$0

\$10,000

Violation Events

Number of Violation Events 1 Number of violation days 31

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$10,000

One monthly event is recommended for the month of March 2010.

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 \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$391

Violation Final Penalty Total \$19,900

This violation Final Assessed Penalty (adjusted for limits) \$19,900

Economic Benefit Worksheet

Respondent: SHIN-ETSU SILICONES OF AMERICA, INC.
Case ID No.: 39905
Reg. Ent. Reference No.: RN100885102
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$5,000	31-Jan-2010	15-Mar-2011	1.12	\$19	\$373	\$391
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 costs to determine the cause of non-compliance and to implement corrective actions. Date required is the first date of non-compliance. Final date is the expected 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 \$5,000
TOTAL \$391

Screening Date 18-Jun-2010

Docket No. 2010-1006-IWD-E

PCW

Respondent SHIN-ETSU SILICONES OF AMERICA, INC.

Policy Revision 2 (September 2002)

Case ID No. 39905

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100885102

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0004362000, Effluent Limitations and Monitoring Requirements Nos. 1 and 2

Violation Description

Failed to comply with permitted effluent limitations, as documented in a record review on May 2, 2010, and as shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. pH was also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,600

Violation Events

Number of Violation Events 1

59 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended for the quarter containing the months of January and February 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$4,975

This violation Final Assessed Penalty (adjusted for limits) \$4,975

Economic Benefit Worksheet

Respondent SHIN-ETSU SILICONES OF AMERICA, INC.
Case ID No. 39905
Reg. Ent. Reference No. RN100885102
Media Water Quality
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							
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1.

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

\$0

TOTAL

\$0

EFFLUENT VIOLATION TABLE			
SHIN-ETSU SILICONES OF AMERICA, INC.			
TPDES Permit No. WQ0004362000			
Docket No. 2010-1006-IWD-E			
	Months		
	1/31/2010	2/28/2010	3/31/2010
5-day BOD daily avg. loading Limit = 142 lbs/day	204.3	c	424.5
5-day BOD daily max. loading Limit = 375 lbs/day	383.6	c	872.4
pH minimum Limit = 6 SU	c	5.5	c

BOD = biochemical oxygen demand
 avg. = average
 max. = maximum

c = compliant
 SU = standard units
 lbs/day = pounds per day

Compliance History Report

Customer/Respondent/Owner-Operator: CN600559272 SHIN-ETSU SILICONES OF AMERICA, INC. Classification: AVERAGE Rating: 1.30

Regulated Entity: RN100885102 CARBON FUNCTIONAL SILANES FACILITY Classification: AVERAGE Site Rating: 1.30

ID Number(s):

AIR NEW SOURCE PERMITS	PERMIT	47029
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	BL0768W
AIR NEW SOURCE PERMITS	REGISTRATION	77127
AIR NEW SOURCE PERMITS	AFS NUM	4803900724
WASTEWATER	PERMIT	WQ0004362000
WASTEWATER	PERMIT	TPDES0124427
WASTEWATER	PERMIT	TX0124427
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	87160
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXR000051029
STORMWATER	PERMIT	TXR05T685
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	BL0768W

Location: Located at a point equidistant between Chubb Lake and the portion of the railroad tracks running southeast of Chubb Lake, approximately one (1) mile west of the Village of Oyster Creek and approximately 2.5 miles north of Freeport, Brazoria County, Texas

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 16, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 16, 2005 to June 16, 2010

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

Name: JR Cao Phone: 239 - 2543

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: 01/12/2008 ADMINORDER 2007-0675-IWD-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Effluent Limits PERMIT

Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

- 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	06/20/2005	(428088)	24	12/18/2006	(589568)	47	08/11/2008	(718164)
2	07/12/2005	(399113)	25	01/22/2007	(589569)	48	08/28/2008	(639306)
3	07/18/2005	(448054)	26	03/19/2007	(589560)	49	09/26/2008	(718165)
4	08/23/2005	(448055)	27	03/19/2007	(589561)	50	10/10/2008	(718166)
5	09/19/2005	(448056)	28	04/05/2007	(556148)	51	11/05/2008	(718167)
6	10/14/2005	(493558)	29	04/11/2007	(589562)	52	12/08/2008	(733428)
7	11/02/2005	(393282)	30	05/10/2007	(589563)	53	01/12/2009	(733429)
8	11/22/2005	(493559)	31	06/07/2007	(589564)	54	02/06/2009	(756575)
9	12/20/2005	(493560)	32	07/09/2007	(589565)	55	03/06/2009	(756576)
10	01/20/2006	(493561)	33	08/14/2007	(608613)	56	04/13/2009	(756577)

11	01/23/2006	(439365)	34	09/14/2007	(608614)	57	05/14/2009	(773600)
12	01/26/2006	(393275)	35	10/03/2007	(608615)	58	06/06/2009	(773501)
13	02/22/2006	(493556)	36	11/12/2007	(633040)	59	06/09/2009	(773502)
14	03/22/2006	(493557)	37	12/07/2007	(633041)	60	08/05/2009	(820750)
15	04/20/2006	(506836)	38	12/20/2007	(612645)	61	10/02/2009	(820751)
16	05/18/2006	(506837)	39	01/11/2008	(633042)	62	10/29/2009	(820749)
17	06/01/2006	(480248)	40	02/08/2008	(677702)	63	11/05/2009	(820752)
18	06/14/2006	(506838)	41	03/11/2008	(677703)	64	12/08/2009	(820753)
19	07/06/2006	(506839)	42	04/14/2008	(677704)	65	12/18/2009	(780949)
20	08/15/2006	(528991)	43	05/15/2008	(696478)	66	01/07/2010	(820754)
21	09/18/2006	(528992)	44	06/11/2008	(696479)	67	02/05/2010	(820748)
22	10/16/2006	(589566)	45	06/18/2008	(682403)	68	06/03/2010	(803654)
23	11/20/2006	(589567)	46	07/09/2008	(696480)	69	06/04/2010	(802191)

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

Date: 8/31/2005 CN600559272
Self Report? YES (448056) Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 11/30/2005 CN600559272
Self Report? YES (493560) Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 1/20/2006 CN600559272
Self Report? NO (439365) Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.11(b)
Description: Failure to document the temperature of the sample storage
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
Description: Failure to maintain records of sample analyses.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
Description: Failure to maintain the required records of monitoring activities.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(e)
Description: Failure to accurately report analytical results.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
30 TAC Chapter 319, SubChapter A 319.7(c)
Description: Failure to maintain a pH meter calibration log.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.11(b)
Description: Failure to document the method reference for the analyses completed in-
Date: 8/31/2006 (528992) CN600559272
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 11/30/2006 (589568) CN600559272
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 12/31/2006 CN600559272
Self Report? YES (589569) Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit
Date: 1/31/2007 CN600559272
Self Report? YES (589560) Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit
Date: 5/31/2007 CN600559272
Self Report? YES (589564) Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 12/20/2007 (612645) CN600559272
Self Report? NO Classification: Minor

Citation:	30 TAC Chapter 319, SubChapter A 319.7(a)		
Description:	Failure to accurately report analytical results.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.7(a) 30 TAC Chapter 319, SubChapter A 319.7(c)		
Description:	Failure to document the temperature of the sample storage refrigerator.		
Date:	06/30/2008 (696480)	CN600559272	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	08/31/2008 (718165)	CN600559272	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	11/30/2008 (733428)	CN600559272	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2009 (756577)	CN600559272	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	12/18/2009 (780949)	CN600559272	
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Permit Requirement #1 PERMIT Failure to maintain compliance with permitted effluent limits (biochemical oxygen demand (BOD, Chloroform).		
Date:	01/31/2010 (820748)	CN600559272	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	02/28/2010	CN600559272	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2010	CN600559272	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SHIN-ETSU SILICONES OF AMERICA,
INC.
RN100885102**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-1006-IWD-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding SHIN-ETSU SILICONES OF AMERICA, INC. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates an organic chemical manufacturing plant with an associated wastewater treatment plant located at a point equidistant between Chubb Lake and the portion of

the railroad tracks running southeast of Chubb Lake, approximately one mile west of the Village of Oyster Creek and approximately 2.5 miles north of Freeport, Brazoria, Texas (the "Facility").

2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on May 2, 2010, TCEQ staff documented the following from self-reported monthly discharge monitoring reports ("DMRs"):

EFFLUENT VIOLATION TABLE			
	Months		
	1/31/2010	2/28/2010	3/31/2010
5-day BOD daily avg. loading Limit = 142 lbs/day	204.3	c	424.5
5-day BOD daily max. loading Limit = 375 lbs/day	383.6	c	872.4
pH minimum Limit = 6 SU	c	5.5	c

BOD = biochemical oxygen demand c = compliant
 avg. = average SU = standard units
 max. = maximum lbs/day = pounds per day

4. The Respondent received notice of the violations on June 4, 2010.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004362000, Effluent Limitations and Monitoring Requirements Nos. 1 and 2.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Twenty-Four Thousand Eight Hundred Seventy-Five Dollars (\$24,875) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Twenty-Four Thousand Eight Hundred Seventy-Five Dollar (\$24,875) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Twenty-Four Thousand Eight Hundred Seventy-Five Dollars (\$24,875) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: SHIN-ETSU SILICONES OF AMERICA, INC., Docket No. 2010-1006-IWD-E" to:

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

2. Within 90 days after the effective date of this Agreed Order, the Respondent shall submit written certification of compliance with the permitted effluent limits of TPDES Permit No. WQ0004362000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limits. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with this Ordering Provision. 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:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 10/11/2010

I, the undersigned, have read and understand the attached Agreed Order in the matter of SHIN-ETSU SILICONES OF AMERICA, INC. I am authorized to agree to the attached Agreed Order on behalf of SHIN-ETSU SILICONES OF AMERICA, INC., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, SHIN-ETSU SILICONES OF AMERICA, INC. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date August 3, 2010

Name (Printed or typed)
Authorized Representative of
SHIN-ETSU SILICONES OF AMERICA, INC.

Title
President

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order

