

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0697-AIR-E **TCEQ ID:** RN105061006 **CASE NO.:** 37658
RESPONDENT NAME: Kenneth Ing dba The Whitesboro Truck Stop

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: The Whitesboro Truck Stop, 31242 United States Highway 82, Whitesboro, Grayson County</p> <p>TYPE OF OPERATION: Truck stop</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on January 12, 2009, alleging that dust from the parking lot of Whitesboro Truck Stop was causing problems by covering the complainant's property. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 11, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. James Nolan, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6634; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Kenneth Ing, Owner, The Whitesboro Truck Stop, 31242 United States Highway 82, Whitesboro, Texas 76273 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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: January 12, 2009</p> <p>Date of Investigation Relating to this Case: February 23, 2009</p> <p>Date of NOV/NOE Relating to this Case: May 7, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>Failed to prevent dust emissions from causing or contributing to nuisance conditions on surrounding properties [30 TEX. ADMIN CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].</p>	<p>Total Assessed: \$800</p> <p>Total Deferred: \$160 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$640</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. On March 10, 2009, purchased an industrial size custom water sprayer with trailer and applied water as needed to the parking lot; and</p> <p>b. Between February 18 and April 21, 2009, purchased and applied several loads of rock and granite gravel to minimize dust conditions in the parking lot.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	11-May-2009	Screening	15-May-2009	EPA Due	
	PCW	29-May-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Kenneth Ing dba The Whitesboro Truck Stop
Reg. Ent. Ref. No.	RN105061006
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37658	No. of Violations	1
Docket No.	2009-0697-AIR-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

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1*

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History *Subtotals 2, 3, & 7*

Notes

Culpability *Subtotal 4*

Notes

Good Faith Effort to Comply Total Adjustments *Subtotal 5*

Economic Benefit *Subtotal 6*

Total EB Amounts	\$50
Approx. Cost of Compliance	\$5,112

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal*

OTHER FACTORS AS JUSTICE MAY REQUIRE *Adjustment*

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty*

DEFERRAL *Adjustment*

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 15-May-2009

Docket No. 2009-0697-AIR-E

PCW

Respondent Kenneth Ing dba The Whitesboro Truck Stop

Policy Revision 2 (September 2002)

Case ID No. 37658

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105061006

Media [Statute] Air

Enf. Coordinator James Nolan

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	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) 5%

>> 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

The penalty was enhanced due to one similar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 15-May-2009

Docket No. 2009-0697-AIR-E

PCW

Respondent Kenneth Ing dba The Whitesboro Truck Stop

Policy Revision 2 (September 2002)

Case ID No. 37658

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105061008

Media [Statute] Air

Enf. Coordinator Juliet Morgan

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description

Failed to prevent dust emissions from causing or contributing to nuisance conditions on surrounding properties, as documented during an investigation conducted on February 23, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

Number of violation days 1

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on the investigation date of February 23, 2009.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

On March 10, 2009 the Respondent purchased an industrial custom water sprayer with trailer and between February 18 and April 21, 2009, the Respondent purchased and applied several loads of rock/granite to minimize dust conditions.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$50

Violation Final Penalty Total \$800

This violation Final Assessed Penalty (adjusted for limits) \$800

Economic Benefit Worksheet

Respondent: Kenneth Ing dba The Whitesboro Truck Stop
Case ID No.: 37658
Reg. Ent. Reference No.: RN105061006
Media: Air
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$750	23-Feb-2009	10-Mar-2009	0.04	\$0	\$2	\$2
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$4,362	23-Feb-2009	21-Apr-2009	0.16	\$2	\$45	\$48
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

Equipment cost includes the purchase of an industrial size custom water sprayer with trailer. Other cost is rock purchased to minimize dust in parking area. The date required was the date nuisance conditions were documented. The final date was the date the items were purchased by the Respondent.

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

\$5,112

TOTAL

\$50

Compliance History Report

Customer/Respondent/Owner-Operator: CN603081654 ING, KENNETH Classification: AVERAGE Rating: 1.50
Regulated Entity: RN105061006 THE WHITESBORO TRUCK STOP Classification: AVERAGE Site Rating: 1.50
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION
Location: 31242 US HIGHWAY 82, WHITESBORO, TX, 76273
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: June 03, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 07, 2004 to May 07, 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?
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
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 08/19/2008 (688880)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 05/07/2008 (653753)
Self NO Classification:
Citation: 30 TAC Chapter 101, SubChapter A 101.4
5C THSC Chapter 382 382.085(a)
5C THSC Chapter 382 382.085(b)
Description: Dust clouds were noted blowing off Whitesboro Truck Stop's property. Moderate dust deposits were noted on the complainant's property. A dust nuisance condition was confirmed.
- 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
KENNETH ING DBA THE
WHITESBORO TRUCK STOP
RN105061006

§
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§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0697-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 Kenneth Ing dba The Whitesboro Truck Stop ("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 truck stop at 31242 Unites States Highway 82 in Whitesboro, Grayson County, Texas (the "Site").
2. The Site consists of one or more sources as defined in the TEX. HEALTH & SAFETY CODE § 382.085(a)(b).
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 May 12, 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 Eight Hundred Dollars (\$800) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Forty Dollars (\$640) of the administrative penalty and One Hundred Sixty Dollars (\$160) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
 - a. On March 10, 2009, purchased an industrial size custom water sprayer with trailer and applied water as needed to the parking lot; and
 - b. Between February 18 and April 21, 2009, purchased and applied several loads of rock and granite gravel to minimize dust conditions in the parking lot.
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 Site, the Respondent is alleged to have failed to prevent dust emissions from causing or contributing to nuisance conditions on surrounding properties, in violation of 30 TEX. ADMIN CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b), as documented during an investigation conducted on February 23, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kenneth Ing dba The Whitesboro Truck Stop, Docket No. 2009-0697-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 Site 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.

TCEQ ENFORCEMENT

Fax: 512-239-0134

Oct 7 2010 16:33

P. 05

Kenneth Ing dba The Whitesboro Truck Stop
DOCKET NO: 2009-0697-AIR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. ...
For the Executive Director

10/22/2010
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.

Kenneth Ing
Signature

10-7-10
Date

Kenneth Ing
Name (Printed or typed)
Authorized Representative of
Kenneth Ing dba The Whitesboro Truck Stop

10-7-10
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.