

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-0828-AIR-E **TCEQ ID:** RN101639078 **CASE NO.:** 39731
RESPONDENT NAME: Plank Coatings, 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: Plank Coatings, 4103 North Tripp Avenue, Odessa, Ector County</p> <p>TYPE OF OPERATION: Dry abrasive cleaning facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on May 3, 2010, alleging that abrasive blasting was being conducted outside the Facility and dust from the blasting was blowing onto the complainant's property. The complainant also stated that soil sampling had been done and that high levels of heavy metals were found. 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 November 8, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Heather Podlipny, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2603; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. David Plank, President, Plank Coatings, Inc., P.O. Box 889, Odessa, Texas 79760 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: May 3, 2010</p> <p>Date of Investigation Relating to this Case: May 5, 2010</p> <p>Date of NOV/NOE Relating to this Case: May 13, 2010 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>Failed to obtain authorization prior to conducting dry abrasive blasting outdoors [30 TEX. ADMIN. CODE § 116.110(a), TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].</p>	<p>Total Assessed: \$950</p> <p>Total Deferred: \$190 <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: \$760</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, on May 14, 2010, the Respondent suspended outdoor abrasive blast operations.</p>

Additional ID No(s): 0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATE Assigned	17-May-2010	PCW	26-May-2010	Screening	20-May-2010	EPA Due	
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RESPONDENT/FACILITY INFORMATION

Respondent	Plank Coatings, Inc.		
Reg. Ent. Ref. No.	RN101639078		
Facility/Site Region	7-Midland	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	39731	No. of Violations	1
Docket No.	2010-0828-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Podlipny
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000
		EC's Team	Enforcement Team 4

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$50
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Notes: The penalty was enhanced due to one similar NOV.

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	\$100
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$9	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$5,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$950
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$950
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$950
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DEFERRAL	20.0% Reduction	Adjustment	-\$190
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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	\$760
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Screening Date

40318 Docket No.

2010-0828-AIR-E

PCW

Respondent

Plank Coatings, Inc.

Policy Revision 2 (September 2002)

Case ID No.

39731

PCW Revision October 30, 2008

Reg. Ent. Reference No.

RN101639078

Media [Statute]

Air

Enf. Coordinator

Heather Podlipny

Compliance History Worksheet

>> Compliance History **Site Enhancement (Subtotal 2)**

Component Number of... Enter Number Here **Adjust.**

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

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 20-May-2010

Docket No. 2010-0828-AIR-E

PCW

Respondent Plank Coatlngs, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39731

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101639078

Media [Statute] Air

Enf. Coordinator Heather Podlipny

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 116.110(a), Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description

Failed to obtain authorization prior to conducting dry abrasive blasting outdoors, as documented during an investigation conducted on May 5, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	X			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 9

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

Violation Base Penalty \$1,000

One quarterly event is recommended from the investigation date of May 5, 2010 to the date operations were suspended on May 14, 2010.

Good Faith Efforts to Comply

10.0% Reduction

\$100

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

Notes

The Respondent suspended operations by May 14, 2010.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$950

This violation Final Assessed Penalty (adjusted for limits) \$950

Economic Benefit Worksheet

Respondent: Plank Coatings, Inc.
Case ID No: 39731
Reg. Ent. Reference No: RN101639078
Media: Air
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost: **Date Required:** **Final Date:** **Yrs Interest Saved:** **Onetime Costs:** **EB Amount:**
Item Description: 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
Buildings				0.00	\$0	\$0
Other (as needed)				0.00	\$0	\$0
Engineering/construction	\$5,000	5-May-2010	14-May-2010	0.02	\$0	\$9
Land				0.00	\$0	n/a
Record Keeping System				0.00	\$0	n/a
Training/Sampling				0.00	\$0	n/a
Remediation/Disposal				0.00	\$0	n/a
Permit Costs				0.00	\$0	n/a
Other (as needed)				0.00	\$0	n/a

Notes for DELAYED costs

Estimated costs for building design and construction for an enclosed blasting site. The Date Required is the date of the investigation. The May 14, 2010 Final Date is the date when outdoor abrasive blast operations were suspended.

Avoided Costs

Item Description	Item Cost	Date Required	Final Date	Yrs Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0
Personnel				0.00	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0
Supplies/equipment				0.00	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0
Other (as needed)				0.00	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$9

Compliance History Report

Customer/Respondent/Owner-Operator: CN600880850 Plank Coatings, Inc. Classification: AVERAGE Rating: 2.00
Regulated Entity: RN101639078 PLANK COATINGS Classification: AVERAGE Site Rating: 1.00
ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 92517
Location: 4103 N TRIPP AVE, ODESSA, TX, 79764
TCEQ Region: REGION 07 - MIDLAND
Date Compliance History Prepared: May 18, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 18, 2005 to May 18, 2010

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

Name: Heather Podlipny Phone: 239 - 2603

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 05/07/2007 (558556)
2 05/18/2007 (560661)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 04/05/2007 (555863)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)
Description: Failure to register using Form PI-7 a surface coating and dry abrasive cleaning facility at the owner's property.
- 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
PLANK COATINGS, INC.
RN101639078

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§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-0828-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 Plank Coatings, 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 dry abrasive cleaning facility at 4103 North Tripp Avenue in Odessa, Ector County, Texas (the "Site").
2. The Site 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 May 18, 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 Nine Hundred Fifty Dollars (\$950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Sixty Dollars (\$760) of the

- administrative penalty and One Hundred Ninety Dollars (\$190) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 9. The Executive Director recognizes that, on May 14, 2010, the Respondent suspended outdoor abrasive blast operations.
 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 obtain authorization prior to conducting dry abrasive blasting outdoors, in violation of 30 TEX. ADMIN. CODE § 116.110(a), TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on May 5, 2010.

III. DENIALS

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

IV. ORDERING PROVISIONS

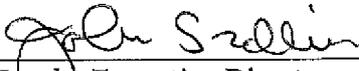
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations 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: Plank Coatings, Inc., Docket No. 2010-0828-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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

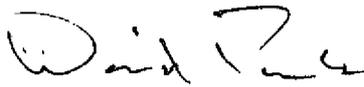
Date 10/7/2010

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.



Signature

Date 24 August 2010

Name (Printed or typed)
Authorized Representative of
Plank Coatings, Inc.

President
Title

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