

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2009-1702-AIR-E TCEQ ID: RN100219997 CASE NO.: 38430**  
**RESPONDENT NAME: Republic Industries, Inc.**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Republic Industries, 1400 Warren Drive, Marshall, Harrison County</p> <p><b>TYPE OF OPERATION:</b> Cabinet manufacturing plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 1, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2134;  Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Kelly Moore, Safety and Environmental Coordinator, Republic Industries, Inc., 1400 Warren Drive, Marshall, Texas 75672  <b>Mr. Jeffrey Kroyer, SVP - Operations, Republic Industries, Inc., 1400 Warren Drive, Marshall, Texas 75672</b>  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 21, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 27, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review investigation.</p> <p><b>AIR</b></p> <p>1) Failure to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance. Specifically, the Respondent had been certifying for the incorrect reporting periods, and they failed to certify compliance for the period beginning February 17, 2007 and ending on January 29, 2008 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(1), Federal Operating Permit ("FOP") No. O-01772, General Terms and Conditions, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to submit a deviation report for at least each six-month period after permit issuance. Specifically, the Respondent submitted a deviation report for the reporting period beginning January 30, 2008 and ending on August 18, 2008 which was more than a six-month period [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), FOP No. O-01772, General Terms and Conditions, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$3,745</p> <p><b>Total Deferred:</b> \$749  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,996</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, implement measures designed to ensure that semi-annual deviation reports and annual permit compliance certifications are submitted accurately; 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>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	31-Aug-2009	Screening	23-Sep-2009	EPA Due	
	PCW	21-Oct-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Republic Industries, Inc.
Reg. Ent. Ref. No.	RN100219997
Facility/Site Region	5-Tyler
Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38430	No. of Violations	2
Docket No.	2009-1702-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Suzanne Walrath
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 4
Maximum	\$10,000		

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 **\$3,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 7.0% Enhancement Subtotals 2, 3, & 7 **\$245**

Notes: The Respondent has received one Notice of Violation ("NOV") for a same or similar violation, and has received one NOV with a dissimilar violation.

**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	\$17	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$150	

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$3,745**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$3,745**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$3,745**

**DEFERRAL** 20.0% Reduction Adjustment **-\$749**

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** **\$2,996**

Screening Date 23-Sep-2009

Docket No. 2009-1702-AIR-E

PCW

Respondent Republic Industries, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38430

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100219997

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

### 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)	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) 7%

>> 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 Respondent has received one Notice of Violation ("NOV") for a same or similar violation, and has received one NOV with a dissimilar violation.

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

Screening Date 23-Sep-2009

Docket No. 2009-1702-AIR-E

PCW

Respondent Republic Industries, Inc.

Policy Revision 2 (September 2009)

Case ID No. 38430

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100219997

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Violation Number

Rule Cite(s)

30 Tex. Admin. Code §§ 122.143(4) and 122.146(1), Federal Operating Permit ("FOP") No. O-01772, General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance. Specifically, the Respondent had been certifying for the incorrect reporting periods, and they failed to certify compliance for the period beginning February 17, 2007 and ending on January 29, 2008.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

573 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended for the compliance certification that was not submitted.

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 \$17

Violation Final Penalty Total \$2,875

This violation Final Assessed Penalty (adjusted for limits) \$2,675

## Economic Benefit Worksheet

**Respondent** Republic Industries, Inc.  
**Case ID No.** 38430  
**Reg. Ent. Reference No.** RN100219997  
**Media** Air  
**Violation No.** 1

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**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)	\$150	28-Feb-2008	18-May-2010	2.22	\$17	n/a	\$17

**Notes for DELAYED costs** This is an estimated cost to implement improvements to the annual compliance certification and deviation reporting procedures. The date required is the date the certification was due to be submitted. The final date is the estimated compliance date.

**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**

\$150

**TOTAL**

\$17

Screening Date 23-Sep-2009

Docket No. 2009-1702-AIR-E

PCW

Respondent Republic Industries, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38430

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100219997

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(B), FOP No. O-01772, General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit a deviation report for at least each six-month period after permit issuance. Specifically, the Respondent submitted a deviation report for the reporting period beginning January 30, 2008 and ending on August 18, 2008 which was more than a six-month period.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
			X		10%
Less than 70%, but more than 30% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 401

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 for the deviation report that submitted inaccurately.

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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,070

This violation Final Assessed Penalty (adjusted for limits) \$1,070

# Economic Benefit Worksheet

**Respondent** Republic Industries, Inc.  
**Case ID No.** 38430  
**Reg. Ent. Reference No.** RN100219997  
**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**

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

The economic benefit for this violation is included in Viol. 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

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603146820 REPUBLIC INDUSTRIES, INC. Classification: AVERAGE Rating: 1.78  
Regulated Entity: RN100219997 REPUBLIC INDUSTRIES Classification: AVERAGE Site Rating: 1.78

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HH0046E
	AIR OPERATING PERMITS	PERMIT	1772
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD982813230
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	39437
	AIR NEW SOURCE PERMITS	PERMIT	24002
	AIR NEW SOURCE PERMITS	PERMIT	23899
	AIR NEW SOURCE PERMITS	PERMIT	43984
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HH0046E
	AIR NEW SOURCE PERMITS	PERMIT	20486
	AIR NEW SOURCE PERMITS	AFS NUM	4820300056
	AIR NEW SOURCE PERMITS	REGISTRATION	77827
	STORMWATER	PERMIT	TXR05U138
	STORMWATER	PERMIT	TXR05W960
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HH0046E

Location: 1400 WARREN DR, MARSHALL, TX, 75672

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: September 23, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 23, 2004 to September 23, 2009

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

Name: Suzanne Walrath Phone: 239 - 2134

## 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	05/18/2006	(465430)
2	07/21/2006	(486827)
3	02/23/2007	(541828)
4	02/23/2007	(541857)
5	06/06/2007	(562470)
6	08/31/2007	(574269)
7	06/18/2009	(759052)
8	08/27/2009	(766626)

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

Date: 06/01/2007 (562470)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
40 CFR Chapter 63, SubChapter C, PT 63, SubPT JJ 63.803(a)  
5C THC Chapter 382, SubChapter D 382.085(b)  
O-1772 STC 5 OP

Description: Failure to prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices for each wood furniture manufacturing operation and addresses each of the work practice standards per 40 CFR §63.803(a) for PROPLANT1 and PROPLANT2.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
40 CFR Chapter 63, SubChapter C, PT 63, SubPT JJ 63.803(b)  
5C THC Chapter 382, SubChapter D 382.085(b)  
O-1772 STC 5 OP

Description: Failure to train all new and existing personnel, including contract personnel, who are involved in finishing, gluing, cleaning, and washoff operations, use of manufacturing equipment.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
40 CFR Chapter 63, SubChapter C, PT 63, SubPT JJ 63.803(c)  
5C THC Chapter 382, SubChapter D 382.085(b)  
O-1772 STC 5 OP

Description: Failure to prepare and maintain with the work practice implementation plan a written leak inspection and maintenance plan.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(2)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
40 CFR Chapter 63, SubChapter C, PT 63, SubPT JJ 63.804(d)  
5C THC Chapter 382, SubChapter D 382.085(b)  
O-1772 STC 5 OP

Description: Failure to develop a organic HAP solvent accounting form.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(1)(B)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THC Chapter 382, SubChapter D 382.085(b)  
O-1772 STC 3 OP

Description: Failure to retain records of quarterly visible emissions observations.

Date: 08/27/2009 (766626)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 113, SubChapter C 113.340  
30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
40 CFR Chapter 63, SubChapter C, PT 63, SubPT JJ 63.807(c)(2)  
5C THSC Chapter 382 382.085(b)  
PERMIT 1772, O-01772 STC 1A OP  
PERMIT 1772, O-01772 STC 6A OP

PERMIT 20486, SC 3 PERMIT

Description: Failure to submit a MACT JJ semiannual report within 30 days after the end of the six-month period. The semiannual period ended December 31, 2007. The MACT JJ report was due January 30, 2008. The semiannual report was received by the TCEQ Region 5 - Tyler Office on August 19, 2008.

F. Environmental audits.

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  
REPUBLIC INDUSTRIES, INC.  
RN100219997**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1702-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 Republic Industries, 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 cabinet manufacturing plant at 1400 Warren Drive in Marshall, Harrison County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 1, 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 Three Thousand Seven Hundred Forty-Five Dollars (\$3,745) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Nine Hundred Ninety-Six Dollars (\$2,996) of the administrative penalty and Seven Hundred Forty-Nine Dollars (\$749) 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 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.
10. 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.
11. 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 certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(1), Federal Operating Permit ("FOP") No. O-01772, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 21, 2009. Specifically, the Respondent had been certifying for the incorrect reporting periods, and they failed to certify compliance for the period beginning February 17, 2007 and ending on January 29, 2008.
2. Failed to submit a deviation report for at least each six-month period after permit issuance, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), FOP No. O-01772, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 21, 2009. Specifically, the Respondent submitted a deviation report for the reporting period beginning January 30, 2008 and ending on August 18, 2008 which was more than a six-month period.

## **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: Republic Industries, Inc., Docket No. 2009-1702-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. 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 that semi-annual deviation reports and annual permit compliance certifications are submitted accurately; 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. 2.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  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

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 Plant 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. 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.
7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Bradley  
\_\_\_\_\_  
For the Executive Director

2/8/2010  
\_\_\_\_\_  
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.

Jeffrey Kroyer  
\_\_\_\_\_  
Signature

12-11-09  
\_\_\_\_\_  
Date

Jeffrey Kroyer in his capacity as  
Name (Printed or typed)  
Authorized Representative of  
Republic Industries, Inc.

SVP - Operations  
\_\_\_\_\_  
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.

