

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-0882-MLM-E TCEQ ID: RN100214758 CASE NO.: 35971**

**RESPONDENT NAME: Mooney Airplane Company, 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 type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Mooney Airplane, 165 Al Mooney Road, Kerrville, Kerr County</p> <p><b>TYPE OF OPERATION:</b> Aircraft manufacturing facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on March 6, 2007, alleging that the Respondent has improper paint booth operation by not venting paint vapors, which is affecting the complainant's health. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 22, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Clinton Sims, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-6933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Ms. Penny Hall, Health and Safety Supervisor, Mooney Airplane Company, Inc., 165 Al Mooney Road, Kerrville, Texas 78028  <b>Mr. Robert Collier, Jr.,</b> Director, Mooney Airplane Company, Inc., 165 Al Mooney Road, Kerrville, Texas 78028  <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 checked="" 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> March 6, 2007</p> <p><b>Date of Investigation Relating to this Case:</b> July 7, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 12, 2008</p> <p><b>Background Facts:</b> This was a complaint investigation and a record review.</p> <p><b>WATER/WASTE</b></p> <p>1) Failure to prevent the unauthorized discharge of industrial solid waste into or adjacent to the water in the state and failure to immediately abate and contain a spill or discharge. Specifically, the Respondent failed to adequately determine whether ecological and human health exposure pathways are of concern and whether water resources, specifically Silver Creek, are threatened or affected [30 TEX. ADMIN. CODE §§ 335.4 and 327.5(a), and TEX. WATER CODE § 26.121].</p> <p>2) Failure to demonstrate in writing to the Executive Director that closure or remediation has been completed. Specifically, the Respondent removed Solid Waste Management Unit 002 ("SWMU2") from Building 21 without prior notification to the TCEQ [30 TEX. ADMIN. CODE § 335.8(b)(3)].</p>	<p><b>Total Assessed:</b> \$5,450</p> <p><b>Total Deferred:</b> \$1,090  <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> \$4,360</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. Immediately upon the effective date of this Agreed Order, develop and implement procedures to prevent discharges of industrial waste and to contain and abate discharges at the Facility.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Submit required documentation concerning closure of SWMU2; and</p> <p>ii. Notify the TCEQ San Antonio Regional Office in writing at least ten working days prior to conducting any investigative, remedial, or monitoring activities to allow TCEQ personnel the opportunity to observe the activities and to split any soil, sediment, groundwater or surface water samples which may be collected.</p> <p>c. Within 60 days after the effective date of this Agreed Order:</p> <p>i. Complete a Tier I Ecological Exclusion Criteria Checklist; and</p> <p>ii. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program.</p> <p>d. Within 75 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 Provisions a. through c.</p>

Additional ID No(s): SWR 31211



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

<b>DATES</b>	<b>Assigned</b>	8-Jul-2008	<b>Screening</b>	8-Jul-2008	<b>EPA Due</b>	
	<b>PCW</b>	8-Jul-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Mooney Airplane Company, Inc.
<b>Reg. Ent. Ref. No.</b>	RN100214758
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	86971	<b>No. of Violations</b>	2	
<b>Docket No.</b>	2008-0882-MLM-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Industrial and Hazardous Waste	<b>Enf. Coordinator</b>	Collin Barth	
<b>Multi-Media</b>	Water Quality	<b>EC's Team</b>	Enforcement Team 7	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.			
<b>Compliance History</b>	9.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$450

**Notes** The Respondent has received one NOV for similar violations and two NOVs for dissimilar violations at this site within the past five years.

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

<b>Good Faith Effort to Comply</b>	0.0% Reduction	<b>Subtotal 5</b>	\$0
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	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.

<b>Total EB Amounts</b>	\$154	<b>0.0% Enhancement</b>	<b>Subtotal 6</b>	\$0
<b>Approx. Cost of Compliance</b>	\$5,100	<b>*Capped at the Total EB \$ Amount</b>		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$5,450
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$5,450

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$5,450
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$1,090
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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.

<b>PAYABLE PENALTY</b>	\$4,360
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**Screening Date** 8-Jul-2008

**Docket No.** 2008-0882-MLM-E

**PCW**

**Respondent** Mooney Airplane Company, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 35971

PCW Revision April 29, 2008

**Reg. Ent. Reference No.** RN100214758

**Media [Statute]** Industrial and Hazardous Waste

**Enf. Coordinator** Colin Barth

### 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	2	4%
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)** 9%

>> **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 NOV for similar violations and two NOVs for dissimilar violations at this site within the past five years.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 9%

**Screening Date** 8-Jul-2008 **Docket No.** 2008-0882-MLM-E **PCW**  
**Respondent** Mooney Airplane Company, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 35971 *PCW Revision April 29, 2008*  
**Reg. Ent. Reference No.** RN100214758  
**Media [Statute]** Industrial and Hazardous Waste  
**Enf. Coordinator** Colin Barth

**Violation Number** 1  
**Rule Cite(s)** 30 Tex. Admin. Code §§ 335.4, 327.5(a), and Tex. Water Code § 26.121  
**Violation Description**  
 Failed to prevent the unauthorized discharge of industrial solid waste into or adjacent to water in the state and failed to immediately abate and contain a spill or discharge, as documented during a record review investigation conducted on July 7, 2008. Specifically, the Respondent failed to adequately determine whether ecological and human health exposure pathways are of concern and whether water resources, specifically Silver Creek, are threatened or affected.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	25%
Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

**Matrix Notes**  
Human health and the environment has been exposed to insignificant amounts of pollutants as a result of this violation.

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events  Number of violation days

mark only one with an x

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended from the record review date of July 7, 2008 to the screening date of July 8, 2008.

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

Estimated EB Amount  Violation Final Penalty Total

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent:** Mooney Airplane Company, Inc.  
**Case ID No.:** 35971  
**Reg. Ent. Reference No.:** RN100214758  
**Media:** Industrial and Hazardous Waste  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Item Description:</b> No commas or \$						

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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)	\$5,000	7-Jul-2008	12-Feb-2009	0.60	\$151	n/a	\$151

Notes for DELAYED costs

Estimated cost to adequately determine whether ecological and human health exposure pathways are of concern and whether water resources are threatened or affected. The Date Required is the record review date and the Final Date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$151

<b>Screening Date</b>	8-Jul-2008	<b>Docket No.</b>	2008-0882-MLM-E	<b>PCW</b>
<b>Respondent</b>	Mooney Airplane Company, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	35971			<i>PCW Revision April 29, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN100214758			
<b>Media [Statute]</b>	Industrial and Hazardous Waste			
<b>Enf. Coordinator</b>	Colin Barth			

<b>Violation Number</b>	2
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 335.8(b)(3)
<b>Violation Description</b>	Failed to demonstrate in writing to the Executive Director that closure or remediation has been completed, as documented during a record review investigation conducted on July 7, 2008. Specifically, the Respondent removed Solid Waste Management Unit 002 (SWMU2) from Building 21 without prior notification to the TCEQ.

**Base Penalty** \$10,000

>> Environmental, Property and Human Health Matrix

OR	<b>Harm</b>				Percent	0%
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>		
	Actual					
	Potential					

>> Programmatic Matrix

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	Percent	25%
		X				

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment** \$7,500

\$2,500

Violation Events

Number of Violation Events  Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

**Violation Base Penalty** \$2,500

One single event is recommended.

Economic Benefit (EB) for this violation      Statutory Limit Test

Estimated EB Amount \$3      Violation Final Penalty Total \$2,725

This violation Final Assessed Penalty (adjusted for limits) \$2,725

## Economic Benefit Worksheet

**Respondent** Mooney Airplane Company, Inc.  
**Case ID No.** 35971  
**Reg. Ent. Reference No.** RN100214758  
**Media** Industrial and Hazardous Waste  
**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)	\$100	7-Jul-2008	12-Feb-2009	0.60	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to provide proper documentation to the TCEQ concerning the closure of SWMU2. The Date Required is the record review date and the Final Date is the estimated 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

\$100

TOTAL

\$3

# Compliance History Report Pending

Customer/Respondent/Owner-Operator:	CN601548332	Mooney Airplane Company, Inc.	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN100214758	MOONEY AIRPLANE	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD066425034	
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31211	
	WASTEWATER LICENSING	LICENSE	WQ0001340000	
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	KF0007V	
	AIR NEW SOURCE PERMITS	PERMIT	72535	
	AIR NEW SOURCE PERMITS	REGISTRATION	83068	
	AIR NEW SOURCE PERMITS	AFS NUM	4826500008	
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	KF0007V	
Location:	165 AL MOONEY RD, KERRVILLE, TX, 78028			
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	September 22, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 19, 2003 to May 19, 2008			

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

Name: Clinton Sims Phone: 239 - 6933

### 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.)
 

N/A	1	02/20/2004	(257283)
	2	01/05/2005	(335414)
	3	03/17/2006	(403930)
	4	04/10/2007	(543702)
	5	04/18/2007	(543677)
	6	08/22/2007	(567158)
	7	09/21/2007	(593812)

8 11/12/2007 (600833)  
9 12/10/2007 (610201)  
10 04/18/2008 (640336)

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

Date: 01/04/2005 (335414) CN601548332

N/A

Self NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)

Description: Failure to meet state notification requirements.

Date: 04/09/2007 (543702) CN601548332

Self NO Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure to maintain records for the spray painting operations and the degreaser operation.

Self NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: The facility failed to register a permit by rule or obtain a permit for the degreaser.

Date: 06/08/2007 (556166) CN601548332

Self NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121

30 TAC Chapter 335, SubChapter A 335.4

Description: Failure to prevent a discharge of hazardous waste.

Self NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.62

Description: Failure to keep solid waste containers closed.

Self NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.8(b)(1)

Description: Failure to close waste management unit 02.

Self NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)

Description: Failure to notify the agency of change in generator status.

Self NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)

40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)

Description: Failure to remove waste from a container storage area within 90 days.

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  
MOONEY AIRPLANE COMPANY,  
INC.  
RN100214758

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-0882-MLM-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 Mooney Airplane Company, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent operates an aircraft manufacturing facility at 165 Al Mooney Road in Kerrville, Kerr County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361 and has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 August 12, 2008.
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 Five Thousand Four Hundred Fifty Dollars (\$5,450) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Three Hundred Sixty Dollars (\$4,360) of the administrative penalty and One Thousand Ninety Dollars (\$1,090) 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 operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the unauthorized discharge of industrial solid waste into or adjacent to water in the state and failed to immediately abate and contain a spill or discharge, in violation of 30 TEX. ADMIN. CODE §§ 335.4, 327.5(a), and TEX. WATER CODE § 26.121, as documented during a record review investigation conducted on July 7, 2008. Specifically, the Respondent failed to adequately determine whether ecological and human health exposure pathways are of concern and whether water resources, specifically Silver Creek, are threatened or affected.
2. Failed to demonstrate in writing to the Executive Director that closure or remediation has been completed, in violation of 30 TEX. ADMIN. CODE § 335.8(b)(3), as documented during a record review investigation conducted on July 7, 2008. Specifically, the Respondent removed Solid Waste Management Unit 002 ("SWMU2") from Building 21 without prior notification to the TCEQ.

### 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: Mooney Airplane Company, Inc., Docket No. 2008-0882-MLM-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. Immediately upon the effective date of this Agreed Order, develop and implement procedures to prevent discharges of industrial waste and to contain and abate discharges at the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 335.4 and 327.5;
  - b. Within 30 days after the effective date of this Agreed Order:
    - i. Submit required documentation concerning the closure of SWMU2, in accordance with 30 TEX. ADMIN. CODE § 335.8. The documents should be sent to:  

Remediation Division, MC 127  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
    - ii. Notify the TCEQ San Antonio Regional Office in writing at least ten working days prior to conducting any investigative, remedial, or monitoring activities to allow TCEQ personnel the opportunity to observe the activities and to split any soil, sediment, groundwater or surface water samples which may be collected;
  - c. Within 60 days after the effective date of this Agreed Order;
    - i. Complete a Tier 1 Ecological Exclusion Criteria Checklist, in accordance with the risk reduction standards specified in 30 TEX. ADMIN. CODE § 350.77(b). The completed checklist should be sent to:

Remediation Division, MC 127  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

- ii. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(1)); and Institutional Controls under Subchapter F; and
- d. Within 75 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 Nos. 2.a. through 2.c.

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 fine 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:

Waste Section, Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

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. 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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
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.

Mooney Airplane Company, Inc.  
DOCKET NO. 2008-0882-MLM-E  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

2/24/2010  
\_\_\_\_\_  
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.

Robert Collier, Jr.  
\_\_\_\_\_  
Signature

October 8, 2009  
\_\_\_\_\_  
Date

ROBERT COLLIER, JR.  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Mooney Airplane Company, Inc.

DIRECTOR  
\_\_\_\_\_  
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.