

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0051-AIR-E **TCEQ ID:** RN103173308 **CASE NO.:** 38997

**RESPONDENT NAME:** Wilkinson Gary Iron & Metal, 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> Gary Wilkinson Iron &amp; Metal, 2300 Scott Street, Laredo, Webb County</p> <p><b>TYPE OF OPERATION:</b> Scrap metal recycling plant</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input 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 May 17, 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> Mr. Terry Murphy, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-5025; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Gary Wilkinson, President, Wilkinson Gary Iron &amp; Metal, Inc., 2300 Scott Street, Laredo, Texas 78040                      Mr. Scott Wilkinson, Vice President, Wilkinson Gary Iron &amp; Metal, Inc., 2300 Scott Street, Laredo, Texas 78040  <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 checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input 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> November 23-25, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> December 17, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>1) Failure to notify the TCEQ within 24 hours of the discovery of an excess opacity event. Specifically, the visible emissions event that occurred on November 23, 2009 was not reported within 24 hours of the event [30 TEX. ADMIN. CODE § 101.201(c) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to prevent unauthorized emissions and failure to ensure that all emission control equipment is maintained in good condition and operating properly during operation of the Plant. Specifically, during the investigation, TCEQ staff observed that the spray bars on the shredder housing were clogged, and that visible emissions were being released from the shredder at an average opacity of 72.08% over a six minute period, which exceeds the required limit of 5% opacity. Since the opacity event could have been avoided by better operational practices, the emissions do not meet the demonstrations in 30 TEX. ADMIN. CODE § 101.222 and are not subject to an affirmative defense [30 TEX. ADMIN. CODE §§ 106.261(a)(5) and 106.4(c) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$990</p> <p><b>Total Deferred:</b> \$198  <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> \$792</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on November 23, 2009, the Respondent unclogged the spray nozzles on the shredder housing.</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 procedures designed to improve maintenance and operational practices in order to address the excess opacity event that occurred on November 23, 2009;</p> <p>b. Within 30 days after the effective date of this Agreed Order, conduct and complete training of all Plant personnel responsible for submitting reports, specifically, personnel responsible for the submittal of emissions events reports, detailing all proper procedures that should be followed; and</p> <p>c. 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 Provisions a. and b.</p>

Additional ID No(s): WBA004D



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	21-Dec-2009		
	PCW	26-Jan-2010	Screening	7-Jan-2010
			EPA Due	

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Wilkinson Gary Iron & Metal, Inc.		
Reg. Ent. Ref. No.	RN103173308		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38997	No. of Violations	2
Docket No.	2010-0051-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Suzanne Walrath
		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 **\$1,100**

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

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

**Compliance History** -10.0% Enhancement Subtotals 2, 3, & 7 **-\$110**

Notes: Penalty reduction due to high performer classification.

**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 \$118  
Approx. Cost of Compliance \$3,450  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$990**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$990**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$990**

**DEFERRAL** 20.0% Reduction Adjustment **-\$198**

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** **\$792**

Screening Date 7-Jan-2010

Docket No. 2010-0051-AIR-E

PCW

Respondent Wilkinson Gary Iron & Metal, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38997

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103173308

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)	0	0%
	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 judgments 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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Penalty reduction due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 7-Jan-2010

Docket No. 2010-0051-AIR-E

PCW

Respondent Wilkinson Gary Iron & Metal, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38997

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103173308

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 101.201(e) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to notify the TCEQ within 24 hours of the discovery of an excess opacity event. Specifically, the visible emissions event that occurred on November 23, 2009 was not reported within 24 hours of the event.

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 1%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

1 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$100

One single event is recommended for one late report.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$60

Violation Final Penalty Total \$90

This violation Final Assessed Penalty (adjusted for limits) \$90

# Economic Benefit Worksheet

**Respondent:** Wilkinson Gary Iron & Metal, Inc.  
**Case ID No.:** 38997  
**Reg. Ent. Reference No.:** RN103173308  
**Media:** Air  
**Violation No. 1**

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime 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	\$1,500	24-Nov-2009	15-Aug-2010	0.72	\$54	n/a	\$54
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$150	24-Nov-2009	15-Aug-2010	0.72	\$5	n/a	\$5

Notes for DELAYED costs: These are estimated costs for the submittal of an emissions event report, and for additional training and oversight needed to ensure the timely and accurate submittal of emissions event reports. The date required is the date the event was first due to be reported. 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	\$1,650	<b>TOTAL</b>	\$60
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Screening Date 7-Jan-2010

Docket No. 2010-0051-AIR-E

PCW

Respondent Wilkinson Gary Iron, & Metal, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38997

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103173308

Media [Statute] Air

Enf. Coordinator Suzanne Walrath

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 106.261(a)(5) and 106.4(c), and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent unauthorized emissions and failed to ensure that all emission control equipment is maintained in good condition and operating properly during operation of the Plant. Specifically, during the investigation, TCEQ staff observed that the spray bars on the shredder housing were clogged, and that visible emissions were being released from the shredder at an average opacity of 72.08% over a six minute period, which exceeds the required limit of 5% opacity. Since the opacity event could have been avoided by better operational practices, the emissions do not meet the demonstrations in 30 Tex. Admin. Code § 101.222 and are not subject to an affirmative defense.

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 which do not exceed levels that are protective of human health or environmental receptors.

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	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on the November 23, 2009 event.

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 \$58

Violation Final Penalty Total \$900

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

# Economic Benefit Worksheet

**Respondent** Wilkinson Gary Iron & Metal, Inc.  
**Case ID No.** 38997  
**Reg. Ent. Reference No.** RN109173308  
**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
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No commas or \$

**Delayed Costs**

Equipment	\$300	23-Nov-2009	23-Nov-2009	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	\$1,500	23-Nov-2009	1-Sep-2010	0.77	\$58	n/a	\$58
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: This is an estimated cost for cleaning the spray nozzles on the shredder housing and to implement procedures designed to improve maintenance and operational practices in order to address the excess opacity event. The date required is the date the opacity event occurred. The final dates are the dates the nozzles were cleaned, and the estimated date of compliance for the training.

**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	\$1,800	<b>TOTAL</b>	\$58
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# Compliance History Report

Customer/Respondent/Owner-Operator: CN602243222 Wilkinson Gary Iron & Metal, Inc. Classification: HIGH Rating: 0.00  
Regulated Entity: RN103173308 GARY WILKINSON IRON & METAL Classification: HIGH Site Rating: 0.00

ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 84294  
AIR NEW SOURCE PERMITS AFS NUM 4847900670  
STORMWATER PERMIT TXR05V364  
AIR EMISSIONS INVENTORY ACCOUNT NUMBER WEA004D

Location: 2300 SCOTT ST, LAREDO, TX, 78040

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: January 07, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 07, 2005 to January 07, 2010

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 11/18/2008 (707721)
  - 2 11/24/2009 (783762)
  - 3 12/17/2009 (785881)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- 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  
WILKINSON GARY IRON & METAL,  
INC.  
RN103173308

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2010-0051-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 Wilkinson Gary Iron & Metal, 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 scrap metal recycling plant at 2300 Scott Street in Laredo, Webb 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 December 22, 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 Nine Hundred Ninety Dollars (\$990) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Ninety-Two Dollars (\$792) of the administrative penalty and

- One Hundred Ninety-Eight Dollars (\$198) 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 November 23, 2009, the Respondent unclogged the spray nozzles on the shredder housing.
  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 Plant, the Respondent is alleged to have:

1. Failed to notify the TCEQ within 24 hours of the discovery of an excess opacity event, in violation of 30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 23-25, 2009. Specifically, the visible emissions event that occurred on November 23, 2009 was not reported within 24 hours of the event.
2. Failed to prevent unauthorized emissions and failed to ensure that all emission control equipment is maintained in good condition and operating properly during operation of the Plant, in violation of 30 TEX. ADMIN. CODE §§ 106.261(a)(5) and 106.4(c), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 23-25, 2009. Specifically, during the investigation, TCEQ staff observed that the spray bars on the shredder housing were clogged, and that visible emissions were being released from the shredder at an average opacity of 72.08% over a six minute period, which exceeds the required limit of 5% opacity. Since the opacity event could have been avoided by better operational practices, the emissions do not meet the demonstrations in 30 TEX. ADMIN. CODE § 101.222 and are not subject to an affirmative defense.

### 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: Wilkinson Gary Iron & Metal, Inc., Docket No. 2010-0051-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 procedures designed to improve maintenance and operational practices in order to address the excess opacity event that occurred on November 23, 2009;
  - b. Within 30 days after the effective date of this Agreed Order, conduct and complete training of all Plant personnel responsible for submitting reports, specifically personnel responsible for the submittal of emissions events reports, detailing all proper procedures that should be followed; and
  - c. 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 Nos. 2.a. and 2.b. 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  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

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.

Wilkinson Gary Iron & Metal, Inc.  
DOCKET NO. 2010-0051-AIR-E  
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### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

John Szollosi  
For the Executive Director

4/27/2010  
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.

[Signature]  
Signature

4-21-10  
Date

Scott Wilkinson  
Name (Printed or typed)  
Authorized Representative of  
Wilkinson Gary Iron & Metal, Inc.

Vice President  
Title

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

