

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0286-AIR-E TCEQ ID RN102568516 CASE NO. 37217
RESPONDENT NAME: AMARILLO ROAD COMPANY, L.P.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

SITE WHERE VIOLATIONS OCCURRED: Approximately three miles southeast of Edmonson on County Road 194, Hale County

TYPE OF OPERATION: Asphalt plant

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired April 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-3400

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. James Nolan, Air Enforcement Section, MC 149, (512) 239-6634

TCEQ Regional Contact: Mr. Jeff Bertl, Lubbock Regional Office, MC R-2, (806) 796-7092

Respondent: Mr. Robert Lane, Vice President, Amarillo Road Company, L.P., P.O. Box 32075, Amarillo, Texas 79120

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: December 17, 2008</p> <p>Date of NOE Relating to this Case: February 8, 2009</p> <p>Background Facts: The case was referred to the Litigation Division on July 17, 2009. The EDP RP was filed on September 8, 2009. Service was not achieved. The EDFARP was filed on October 29, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDFARP on November 4, 2009. The EDSARP was filed on January 22, 2010, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDSARP on January 26, 2010. Respondent has failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>AIR:</p> <ol style="list-style-type: none"> Failed to conduct performance tests no later than 180 days after the initial startup of the hot mix asphalt plant or satisfy the criteria of waiver from testing [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE §§ 101.20(1) and 116.115(c), 40 CFR § 60.8(a), TCEQ Agreed Order Docket No. 2007-0136-AIR-E Ordering Provision No. 2.a., and NSR Permit No. 45063 Special Condition Nos. 1 and 15A]. Failed to request a relocation authorization 30 days prior to proposed construction and obtain approval [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 116.115(b)(2)(B) and (c), and NSR Permit No. 45063, General Condition No. 4 and Special Conditions Nos. 11A and 13F]. 	<p>Total Assessed: \$25,200</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$25,200</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately maintain a copy of the NSR Permit along with records for a rolling two-year period containing data sufficient to demonstrate compliance. Within 30 days: <ol style="list-style-type: none"> Submit data/records in the format required by NSR Permit No. 45063 to show the emission rates from the Caterpillar 3412C generator engine; Implement improvements to training, design, operation, or maintenance procedures, in order to address the incomplete reporting notifications required by NSR Permit No. 45063, and to prevent the reoccurrence of same or similar occurrences; and Submit an administratively complete application to amend NSR Permit No. 45063 to authorize actual operating conditions not currently authorized by the permit to TCEQ. Respond completely and adequately, as determined by the Air Permits Division, to all correspondence requesting information concerning the NSR Permit amendment application. Within 60 days, complete performance testing at actual representative operating conditions to be determined in the pre-test meetings with TCEQ or obtain a waiver from testing. Within 75 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 1 through 4. Within 150 days after submitting the NSR permit amendment application, submit written certification that either authorization to construct and operate the Plant at actual operating conditions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>3. Failed to report completion of construction within 15 days of completion [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 116.115(b)(2)(A), and NSR Permit No. 45063, General Condition No. 3].</p> <p>4. Failed to maintain a copy of NSR Permit No. 45063 along with records for a rolling two-year period containing data sufficient to demonstrate compliance [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 116.115(b)(2)(E) and (c), and NSR Permit No. 45063, Special Condition No. 21 and General Condition No. 7].</p> <p>5. Failed to submit records containing the information and data sufficient to demonstrate compliance with permitted emission rates from the Caterpillar 3412C generator and failed to submit certification that the Plant was being operated in accordance with all of the special conditions of the NSR Permit [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 116.115(b)(2)(E) and (c), TCEQ Agreed Order Docket No. 2007-0136-AIR-E Ordering Provision Nos. 2.b. and 2.c., and NSR Permit No. 45063, Special Condition Nos. 4 and 21].</p>		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-Feb-2009			
	PCW	19-Jan-2010	Screening	20-Feb-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Amarillo Road Company, L.P.				
Reg. Ent. Ref. No.	RN102568516				
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37217	No. of Violations	5		
Docket No.	2009-0286-AIR-E	Order Type	Findings		
Media Program(s)	Air	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	James Nolan		
		EC's Team	Enforcement Team 4		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$21,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$4,200
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Notes	The penalty was enhanced due to one 1660 style order.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$652	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$7,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$25,200
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$25,200
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$25,200
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$25,200
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Screening Date 20-Feb-2009

Docket No. 2009-0286-AIR-E

PCW

Respondent Amarillo Road Company, L.P.

Policy Revision 2 (September 2002)

Case ID No. 37217

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102568516

Media [Statute] Air

Enf. Coordinator James Nolan

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes
The penalty was enhanced due to one 1660 style order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 20-Feb-2009 **Docket No.** 2009-0286-AIR-E **PCW**
Respondent Amarillo Road Company, L.P. *Policy Revision 2 (September 2002)*
Case ID No. 37217 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102568516
Media [Statute] Air
Enf. Coordinator James Nolan

Violation Number 1
Rule Cite(s) Agreed Order Docket No. 2007-0136-AIR-E, Ordering Provisions No. 2.a., 30 Tex. Admin Code §§ 101.20(1) and 116.115(c), 40 Code of Federal Regulations § 60.8(a), New Source Review ("NSR") Permit No. 45063, Special Condition Nos. 1 and 15A, and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to conduct performance tests no later than 180 days after the initial startup of the hot mix asphalt plant or satisfy the criteria for a waiver from testing, as required by Ordering Provision No. 2.a.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual	Potential	Potential	
		x		10%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment could have been exposed to significant amounts of pollutants which would not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 16 485 Number of violation days

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

Violation Base Penalty \$16,000

16 monthly events are recommended from the October 25, 2007 effective date of the Order to the February 20, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$16,000

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

Estimated EB Amount \$330 **Violation Final Penalty Total** \$19,200

This violation Final Assessed Penalty (adjusted for limits) \$19,200

Economic Benefit Worksheet

Respondent Amarillo Road Company, L.P.
Case ID No. 37217
Reg. Ent. Reference No. RN102568516
Media Air
Violation No. 1

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)	\$2,000	25-Oct-2007	25-Oct-2009	2.00	\$13	\$267	\$280
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)	\$500	25-Oct-2007	25-Oct-2009	2.00	\$50	n/a	\$50

Notes for DELAYED costs

Estimated cost to perform required testing and estimated cost for additional oversight and management practices designed to ensure proper reporting and operating practices are followed. Date Required is the effective date of the order and Final Date is the prospective 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

\$2,500

TOTAL

\$330

Screening Date 20-Feb-2009 **Docket No.** 2009-0286-AIR-E **PCW**
Respondent Amarillo Road Company, L.P. *Policy Revision 2 (September 2002)*
Case ID No. 37217 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102568516
Media [Statute] Air
Enf. Coordinator James Nolan

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 116.115(b)(2)(B) and (c), NSR Permit No. 45063, General Condition No. 4 and Special Condition Nos. 11A and 13F, and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to request a relocation authorization 30 days prior to proposed construction and obtain approval. Specifically, the Respondent operated the asphalt plant at a new location prior to receiving approval for construction at that site, as documented during the investigation conducted on December 17, 2008.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 3 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on the investigation date.

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 received authorization at the site on December 8, 2008.

Violation Subtotal \$1,000

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

Estimated EB Amount \$4

Violation Final Penalty Total \$1,200

This violation Final Assessed Penalty (adjusted for limits) \$1,200

Economic Benefit Worksheet

Respondent Amarillo Road Company, L.P.
Case ID No. 37217
Reg. Ent. Reference No. RN102568516
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	\$1,000	12-Nov-2008	8-Dec-2008	0.07	\$4	n/a	\$4
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a relocation request. Date Required is the first documented date of operation and Final Date is the 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

\$1,000

TOTAL

\$4

Screening Date 20-Feb-2009

Docket No. 2009-0286-AIR-E

PCW

Respondent Amarillo Road Company, L.P.

Policy Revision 2 (September 2002)

Case ID No. 37217

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102568516

Media [Statute] Air

Enf. Coordinator James Nolan

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 116.115(b)(2)(A), NSR Permit No. 45063, General Condition No. 3, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to report the completion of construction within 15 days of completion. Specifically, the Respondent was operating by November 12, 2008, but had not reported the completion of construction by the investigation date of December 17, 2008.

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	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					
Adjustment					\$9,000

\$1,000

Violation Events

Number of Violation Events 1 1 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended based on the investigation date.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDP RP/Settlement Offer

\$0

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 \$25

Violation Final Penalty Total \$1,200

This violation Final Assessed Penalty (adjusted for limits) \$1,200

Economic Benefit Worksheet

Respondent Amarillo Road Company, L.P.
Case ID No. 37217
Reg. Ent. Reference No. RN102568516
Media Air
Violation No. 3

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)	\$500	28-Oct-2008	25-Oct-2009	0.99	\$25	n/a	\$25

Notes for DELAYED costs

Estimated cost to submit the required report. Date Required is the date the report was due (15 days prior to completion) and Final Date is the prospective 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

\$500

TOTAL

\$25

Screening Date 20-Feb-2009 **Docket No.** 2009-0286-AIR-E **PCW**
Respondent Amarillo Road Company, L.P. *Policy Revision 2 (September 2002)*
Case ID No. 37217 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102568516
Media [Statute] Air
Enf. Coordinator James Nolan

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 116.115(b)(2)(E) and (c), NSR Permit No. 45063, Special Condition No. 21 and General Condition No. 7, and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to maintain a copy of the permit along with records for a rolling two year period containing data sufficient to demonstrate compliance. Specifically, as documented during the investigation conducted on December 17, 2008, the Respondent did not have a copy of the permit nor records at the site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on the investigation date.

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 \$43 **Violation Final Penalty Total** \$1,200

This violation Final Assessed Penalty (adjusted for limits) \$1,200

Economic Benefit Worksheet

Respondent Amarillo Road Company, L.P.
Case ID No. 37217
Reg. Ent. Reference No. RN102568516
Media Air
Violation No. 4

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	\$1,000	17-Dec-2008	25-Oct-2009	0.85	\$43	n/a	\$43
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

Estimated cost for additional oversight and management practices designed to ensure proper recordkeeping practices are followed. Date Required is the investigation date and Final Date is the prospective 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

\$1,000

TOTAL

\$43

Screening Date 20-Feb-2009 **Docket No.** 2009-0286-AIR-E **PCW**
Respondent Amarillo Road Company, L.P. *Policy Revision 2 (September 2002)*
Case ID No. 37217 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102568516
Media [Statute] Air
Enf. Coordinator James Nolan

Violation Number 5
Rule Cite(s) Agreed Order Docket No. 2007-0136-AIR-E, Ordering Provisions Nos. 2.b. and 2.c., 30 Tex. Admin. Code § 116.115(b)(2)(E) and (c), NSR Permit No. 45063, Special Condition Nos. 4 and 21, and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to submit records containing the information and data sufficient to demonstrate compliance with the permitted emission rates from the Caterpillar 3412C generator and failed to submit certification that the Plant was being operated in accordance with all of the special conditions of the permit.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 485 Number of violation days

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

Violation Base Penalty \$2,000

Two single events are recommended for each submittal required.

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 \$2,000

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

Estimated EB Amount \$250 **Violation Final Penalty Total** \$2,400

This violation Final Assessed Penalty (adjusted for limits) \$2,400

Economic Benefit Worksheet

Respondent Amarillo Road Company, L.P.
Case ID No. 37217
Reg. Ent. Reference No. RN102568516
Media Air
Violation No. 5

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)	\$2,500	25-Oct-2007	25-Oct-2009	2.00	\$250	n/a	\$250

Notes for DELAYED costs

Estimated cost for additional oversight and management practices designed to ensure proper reporting and operating practices are followed. Date Required is the effective date of the order and Final Date is the prospective 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

\$2,500

TOTAL

\$250

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600967145	Amarillo Road Company, L.P.	Classification: AVERAGE	Rating: 21.63
Regulated Entity:	RN102568516	ASPHALT PLANT 2	Classification: POOR	Site Rating: 232.50

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	45063
	AIR NEW SOURCE PERMITS	PERMIT	45211
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	945063T

Location: PORTABLE ~ 3.0 MILES SOUTHEAST OF EDMONSON,
ON COUNTY ROAD 194, HALE COUNTY, TEXAS.

TCEQ Region: REGION 02 - LUBBOCK

Date Compliance History Prepared: February 19, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 19, 2004 to February 19, 2009

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

Name: Bryan Elliott Phone: 239 - 6162

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 of the site during the compliance period? | | No |
| 3. If Yes, who is the current owner? | N/A | |
| 4. If Yes, who was/were the prior owner(s)? | N/A | |
| 5. When did the change(s) in ownership occur? | N/A | |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO | | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 10/25/2007 **ADMINORDER 2007-0136-AIR-E**

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)

30 TAC Chapter 116, SubChapter B 116.115(c)

40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.8(a)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 1 and 15 PERMIT

Description: Failed to conduct performance tests no later than 180 days after the initial startup of the hot mix asphalt plant or satisfy the criteria for a waiver from testing.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: SC 3A PERMIT

Description: Failed to comply with the generator fuel sulfur content limit of 0.3% by weight. A fuel analysis test conducted on October 13, 2006 indicated that the fuel contained 0.452% sulfur.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: SC 3B PERMIT

Description: Failed to use either pipeline sweet natural gas or first run No. 2 or No. 4 fuel oil in the dryer and failed to obtain written approval from TCEQ before using No. 6 fuel oil in the dryer.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(E)

30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: SC 4 PERMIT

Description: Failed to submit records containing the information and data sufficient to demonstrate compliance with the permitted emission rates from the Caterpillar 3412C generator.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter D 382.085(a)

Rqmt Prov: SC 7A PERMIT

Description: Failed to maintain the maximum mix temperature of the asphalt concrete at or below 325°F.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: 10 PERMIT

Description: Failed to mark all stationary equipment authorized by the permit with the assigned Account Identification Number.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: SC 17 PERMIT

Description: Failed to perform stack sampling analysis for particulate matter and volatile organic compounds and other testing as required when the asphalt concrete mix temperature exceeded 325°F.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(E)

30 TAC Chapter 116, SubChapter B 116.115(c)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: SC 21 PERMIT

Description: Failed to keep records for a rolling two-year period and provide records containing the information and data sufficient to demonstrate compliance with the permit. Specifically, with the use of the on-site computer, a partial set of records were available for viewing during the investigation, but ARC failed to provide the additional requested operational data sufficient to demonstrate compliance with the permit.

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 01/05/2007 (517044)

2 02/12/2009 (725157)

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 AMARILLO ROAD COMPANY, L.P., RN102568516	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**DEFAULT ORDER
DOCKET NO. 2009-0286-AIR-E**

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s First Amended Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 382, TEX. WATER CODE ch. 7 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Amarillo Road Company, L.P. (“Amarillo Road Company”).

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Amarillo Road Company owns and operates an asphalt plant located approximately three miles southeast of Edmonson County Road 194, Hale County, Texas (the “Plant”).
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted on December 17, 2008, TCEQ Lubbock Regional Office investigator documented that Amarillo Road Company:
 - a. Failed to conduct performance tests no later than 180 days after the initial startup of the hot mix asphalt plant or satisfy the criteria for a waiver from testing as required by TCEQ Agreed Order Docket No. 2007-0136-AIR-E;
 - b. Failed to request authorization to relocate 30 days prior to the proposed construction and obtain approval. Specifically, Amarillo Road Company operated the asphalt plant at a new location prior to receiving approval for construction at the Plant;

- c. Failed to report completion of construction within 15 days of completion. Specifically, Amarillo Road Company was operating by November 12, 2008, but had not reported the completion of construction as required;
 - d. Failed to maintain a copy of New Source Review (“NSR”) Permit No. 45063 along with records for a rolling two-year period containing data sufficient to demonstrate compliance. Specifically, on the date of the investigation, Amarillo Road Company had neither a copy of the permit nor other records at the Plant; and
 - e. Failed to submit records containing the information and data sufficient to demonstrate compliance with the permitted emission rates from the Caterpillar 3412C generator and failed to submit certification that the Plant was being operated in accordance with all of the special conditions of the NSR Permit.
4. Amarillo Road Company received notice of the violations on or about February 13, 2009.
5. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Amarillo Road Company L.P.” (the “EDPRP”) in the TCEQ Chief Clerk’s Office on September 8, 2009. The Executive Director was not able to confirm Amarillo Road Company received service of the EDPRP. Accordingly, the Executive Director’s First Amended Petition was prepared.
6. The Executive Director filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Amarillo Road Company L.P.” (the “EDFARP”) in the TCEQ Chief Clerk’s Office on October 29, 2009.
7. By letter dated October 29, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Amarillo Road Company with notice of the EDFARP. According to the return receipt “green card,” Amarillo Road Company received notice of the EDFARP on November 4, 2009, as evidenced by the signature on the card.
8. The Executive Director filed the “Executive Director’s Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Amarillo Road Company L.P.” (the “EDSARP”) in the TCEQ Chief Clerk’s Office on January 22, 2010.

9. By letter dated January 22, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Amarillo Road Company with notice of the EDSARP. According to the return receipt “green card,” Amarillo Road Company received notice of the EDSARP on January 26, 2010, as evidenced by the signature on the card.
10. More than 20 days have elapsed since Amarillo Road Company received notice of the EDFARP and EDSARP provided by the Executive Director. Amarillo Road Company failed to file an answer to the EDFARP or EDSARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Amarillo Road Company is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382, TEX. WATER CODE ch. 7, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Amarillo Road Company failed to conduct performance tests no later than 180 days after the initial startup of the hot mix asphalt plant or satisfy the criteria for waiver from testing as required by TCEQ Agreed Order Docket No. 2007-0136-AIR-E, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 101.20(1) and 116.115(c); 40 CFR § 60.8(a); TCEQ Agreed Order Docket No. 2007-0136-AIR-E, Ordering Provision 2.a.; and NSR Permit No. 45063, Special Condition Nos. 1 and 15A.
3. As evidenced by Finding of Fact No. 3.b., Amarillo Road Company failed to request authorization to relocate 30 days prior to proposed construction and obtain approval, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.115(b)(2)(B) and (c); NSR Permit No. 45063, General Condition No. 4 and Special Conditions Nos. 11A and 13F.
4. As evidenced by Finding of Fact No. 3.c., Amarillo Road Company failed to report completion of construction within 15 days of completion of the new asphalt plant, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.115(b)(2)(A); and NSR Permit No. 45063, General Condition No. 3.
5. As evidenced by Finding of Fact No. 3.d., Amarillo Road Company failed to maintain a copy of the permit along with records for a rolling two-year period containing data sufficient to demonstrate compliance, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.115(b)(2)(E) and (c); and NSR Permit No. 45063, Special Condition No. 21 and General Condition No. 7.

6. As evidenced by Finding of Fact No. 3.e., Amarillo Road Company failed to submit records containing the information and data sufficient to demonstrate compliance with permitted emission rates from the Caterpillar 3412C generator, and failed to submit certification that the Plant was being operated in accordance with special conditions of the NSR Permit, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 116.115(b)(2)(E) and (c); TCEQ Agreed Order Docket No. 2007-0136-AIR-E, Ordering Provisions Nos. 2.b. and 2.c.; and NSR Permit No. 45063, Special Condition Nos. 4 and 21.
7. As evidenced by Finding of Fact Nos. 6, 7, 8 and 9, the Executive Director timely served Amarillo Road Company with proper notice of the EDFARP and EDSARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 10, Amarillo Road Company failed to file a timely answer to the EDFARP or the EDSARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Amarillo Road Company and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Amarillo Road Company for violations of the Texas Water Code and the Texas Health & Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of twenty-five thousand two hundred dollars (\$25,200.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Amarillo Road Company is assessed an administrative penalty in the amount twenty-five thousand two hundred dollars (\$25,200.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Amarillo Road Company's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not

raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "RE: Amarillo Road Company, L.P.; Docket No. 2009-0286-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. Amarillo Road Company shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Amarillo Road Company shall maintain a copy of the NSR Permit along with records for a rolling two-year period containing data sufficient to demonstrate compliance, in accordance with 30 TEX. ADMIN. CODE §116.115(b)(2)(E);
 - b. Within 30 days after the effective date of this Order, Amarillo Road Company shall:
 - i. Submit data and records in the format required by NSR Permit No. 45063 to show the emission rates from the Caterpillar 3412C generator engine;
 - ii. Implement improvements to training, design, operation, or maintenance procedures, in order to address the incomplete reporting notifications required by NSR Permit No. 45063, and to prevent the reoccurrence of same or similar occurrences;
 - iii. Submit an administratively complete application to amend NSR Permit No. 45063 to authorize actual operating conditions not currently authorized by the permit to:

Air Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - c. Amarillo Road Company shall respond completely and adequately, as determined by the Air Permits Division, to all correspondence requesting information concerning the NSR Permit No. 45063 amendment application;

- d. Within 60 days after the effective date of this Order, Amarillo Road Company shall complete performance testing at actual representative operating conditions to be determined in the pre-test meetings with TCEQ or obtain a waiver from testing;
- e. Within 75 days after the effective date of this Order, Amarillo Road Company shall submit written certification as described in Ordering Provision No. 2.g. to demonstrate compliance with Ordering Provisions 2.a. through 2.d.;
- f. Within 150 days after submitting the NSR Permit amendment application, Amarillo Road Company shall submit written certification as described in Ordering Provision No. 2.g. that either authorization to construct and operate the Plant at actual operating conditions has been obtained or that construction/operation has ceased until such time that appropriate authorization is obtained; and
- g. The certifications required by Ordering Provisions Nos. 2.e. and 2.f. shall include detailed supporting documentation, including photographs, receipts, and/or other records. The certifications 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.”

Amarillo Road Company shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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
Texas Commission on Environmental Quality
Lubbock Regional Office
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Amarillo Road Company. Amarillo Road Company is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant operations referenced in this Order.
5. If Amarillo Road Company fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Amarillo Road Company's failure to comply is not a violation of this Order. Amarillo Road Company shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Amarillo Road Company shall notify the Executive Director within seven days after Amarillo Road Company becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Amarillo Road Company shall be made in writing to the Executive Director. Extensions are not effective until Amarillo Road Company receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Amarillo Road Company if the Executive Director determines that Amarillo Road Company has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

STATE OF TEXAS §
COUNTY OF TRAVIS §

“My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Amarillo Road Company, L.P.” (the “EDPRP”) was filed with the Office of the Chief Clerk on September 8, 2009. The Executive Director was not able to confirm Amarillo Road Company received service of the EDPRP. Accordingly, the Executive Director prepared an amended petition.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Amarillo Road Company, L.P.” (the “EDFARP”) was filed with the Office of the Chief Clerk on October 29, 2009.

By letter dated October 29, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Amarillo Road Company with notice of the EDFARP. According to the return receipt “green card,” Amarillo Road Company received notice of the EDFARP on November 4, 2009, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Amarillo Road Company L.P.” (the “EDSARP”) in the TCEQ Chief Clerk’s Office on January 22, 2010.

By letter dated January 22, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Amarillo Road Company with notice of the EDSARP. According to the return receipt “green card,” Amarillo Road Company received notice of the EDSARP on January 26, 2010, as evidenced by the signature on the card.

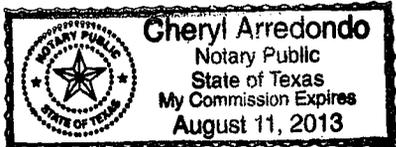
More than 20 days have elapsed since Amarillo Road Company received notice of the EDFARP and EDSARP. Amarillo Road Company failed to file an answer to the EDFARP or EDSARP, failed to request a hearing, and failed to schedule a settlement conference.”



Jim Sallans, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 3rd day of March, A.D., 2010.





Notary Signature