

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-0065-AIR-E TCEQ ID: RN100210806 CASE NO.: 38978
RESPONDENT NAME: Intercontinental Terminals Company LLC

ORDER TYPE:		
<input checked="" type="checkbox"/> 1600 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Intercontinental Terminals Deer Park Terminal, 1943 Independence Parkway South, La Porte, Harris County</p> <p>TYPE OF OPERATION: Bulk liquid storage terminal</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 26, 2010. Comments were received on April 23, 2010, April 26, 2010, and May 10, 2010 from Mr. Bob Allen, Manager, Permits & Technical Services, Harris County Public Health & Environmental Services, 107 North Munger, Pasadena, Texas 77506, Mr. Rock Owens, Chief, Environmental Division, and Mr. Vince Ryan, Harris County Attorney, 1019 Congress, 15th Floor, Houston, Texas 77002.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Miriam Hall, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-1044; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Robert Pennacchi, Plant Manager, Intercontinental Terminals Company LLC, P.O. Box 698, Deer Park, Texas 77571 Mr. Carl E. Holley, Vice President, SHE & Regulatory Compliance, Intercontinental Terminals Company LLC, P.O. Box 698, Deer Park, Texas 77571 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 21, 2009</p> <p>Date of NOV/NOE Relating to this Case: December 17, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>Failure to prevent the overloading of a railcar resulting in the unauthorized release of 1,452 pounds of toluene, a hazardous air pollutant, during a four-hour emissions event on September 19, 2009 (Incident No. 129623). Because the event was avoidable due to an operator failing to tighten bolts on a hatch and leaving the area during loading, the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 were not met [30 TEX. ADMIN. CODE § 116.115(c), Permit No. 1078, Special Condition No. 5, and TEX. HEALTH & SAFETY Code § 382.085(b)].</p>	<p>Total Assessed: \$10,000</p> <p>Total Deferred: \$2,000 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$8,000</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a) On January 18, 2010, installed a surveillance camera at the Track D and E Rail Loading Area to give key personnel the opportunity to view all loading spots 24 hours a day; and</p> <p>b) By January 22, 2010, revised the Railroad Loading Checklists, operator qualification exams, and operating procedures and conducted operator training on the new procedures and checklists.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a) Immediately upon the effective date of this Agreed Order, concerning video footage from the surveillance camera at the Track D and E Rail Loading Area:</p> <p>i. Maintain all video recordings for 30 days;</p> <p>ii. Archive and store for three years, all video footage from the day(s) an emissions event and/or spill occurred at the Track D and E Rail Loading Area and during the cleanup of the incident; and</p> <p>iii. Provide the video recordings to the TCEQ upon request.</p> <p>b) Within 30 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.iii.</p>

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Bryan W. Shaw, Ph.D., Chairman
Carlos Rubinstein, Commissioner
Buddy Garcia, Commissioner
Les Trobman, General Counsel

Date: June 15, 2010

Thru: *BWS* Bryan Sinclair, Director, Enforcement Division

From: Michael De La Cruz, Manager, Enforcement Division *MD*

Subject: Response to Comments Received Concerning Proposed Agreed Enforcement Order, Intercontinental Terminals Company LLC, La Porte, Harris County
RN100210806, Enforcement Case No. 38978, Docket No. 2010-0065-AIR-E

In response to a publication in the *Texas Register* on March 26, 2010, three comment letters have been received regarding a proposed agreed enforcement order requiring certain actions of Intercontinental Terminals Company LLC. Two comment letters were received from Harris County Attorney's Office, one dated April 23, 2010, within the thirty-day public comment period, and the other dated May 10, 2010, after the thirty-day public comment period. One comment letter was received from the Harris County Public Health & Environmental Services Department, Environmental Public Health Division ("HCPHES") dated April 26, 2010.

The proposed order resolves a violation of 30 TEX. ADMIN. CODE § 116.115(c), Permit No. 1078, Special Condition No. 5, and TEX. HEALTH & SAFETY CODE § 382.085(b) for failing to prevent the overloading of a railcar resulting in the unauthorized release of 1,452 pounds of toluene, a hazardous air pollutant, during a four-hour emissions event on September 19, 2009 (Incident No. 129623). Because the event was avoidable due to an operator failing to tighten bolts on a hatch and leaving the area during loading, the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 were not met. The violation was documented during an investigation on October 21, 2009. TCEQ staff and Intercontinental Terminals Company LLC originally agreed on the terms of the proposed order on February 24, 2010. The order would assess a Ten Thousand Dollar (\$10,000) penalty, of which Two Thousand Dollars (\$2,000) is deferred in accordance with the expedited order process.

Copies of the comments and the staff response to the comments are attached for your consideration. In the letters from the Harris County Attorney's Office, the commentor requested that the Commission reject the proposed settlement because:

In the letter dated April 23, 2010, the commentor believes that the penalty is too low due to repeat violations, is below the maximum penalty that could be assessed, and does not include a Texas Water Code violation; that the corrective actions are inadequate; that the proposed settlement does not compensate Harris County for the resources it expended in its investigation and enforcement efforts; and that if this order becomes final, it may preclude Harris County from seeking additional injunctive relief or from receiving any compensation for the damage to the local environment. The commentor also questions the use of a 1660 order.

In the letter dated May 10, 2010, the commentor was concerned that the TCEQ did not take into account a TCEQ investigation conducted on February 2, 2010, in which the investigator reviewed 16 non-reportable emissions events and determined that there was a pattern of poor maintenance on lines and hoses, and that the TCEQ did not do a complete investigation of the spill.

In the letter dated April 26, 2010 from HCPHES, the commentator requested that the Commission withdraw or withhold consent to the proposed settlement based on the fact that Harris County filed a lawsuit for the same incident.

Accordingly, the Enforcement Division recommends that you adopt this proposed order.

Attachments

cc: Manuel Bautista, Manager, Air Section, Houston Regional Office
Jason Harris, Manager, Air Section, Houston Regional Office, TCEQ
Miriam Hall, Enforcement Coordinator, Enforcement Division
Central Records, MC 213, Building E, 1st Floor, HG0403N
Enforcement Division Reader File

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 15, 2010

Mr. Bob Allen, Manager, Permits & Technical Services
Harris County Public Health & Environmental Services Department
Environmental Services Division
107 North Munger
Pasadena, Texas 77506

Re: Comments Received, Proposed Agreed Enforcement Order
Intercontinental Terminals Company LLC
RN100210806; Docket No. 2010-0065-AIR-E; Enforcement Case No. 38978

Dear Mr. Allen:

On April 26, 2010, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") received a letter from the Harris County Public Health & Environmental Services Department, Environmental Public Health Division ("HCPHES") dated April 26, 2010, that was in opposition to the above-referenced proposed Agreed Order related to Intercontinental Terminals Company LLC ("ITC") located in La Porte, Texas. Specifically, HCPHES requested that the Commission withdraw or withhold consent to the proposed settlement based on the fact that Harris County filed a lawsuit for the same incident which occurred on September 19, 2009. The County's letters have been forwarded to the TCEQ's Office of the General Counsel such that the Commissioners can consider the HCPHES' comments regarding the proposed order.

HCPHES conducted its own investigation of the spill on September 19, 2009, conducted its own investigation of the associated air emissions event on October 6, 2009, issued ITC a Violation Notice on October 29, 2009, and forwarded the investigation report and Violation Notice to the Harris County Attorney's Office for enforcement action on January 12, 2010, who in turn filed a lawsuit on March 15, 2010. TCEQ conducted its investigation of the air emissions event on October 21, 2009, issued the Notice of Enforcement and referred the case to the TCEQ Enforcement Division on December 17, 2009, and sent a proposed agreed order to ITC on February 17, 2010. ITC signed that proposed order and paid the administrative penalty on February 24, 2010 which was sent to the Office of the Secretary of State on March 16, 2010 to be published in the *Texas Register* on March 26, 2010. TCEQ was notified of the pending lawsuit on March 16, 2010, the same day the publication notice was sent to the *Texas Register*.

Under the current TCEQ order, ITC was assessed an administrative penalty of Ten Thousand Dollars (\$10,000), of which Two Thousand Dollars (\$2,000) has been deferred in accordance with our expedited order process. ITC has paid Eight Thousand Dollars (\$8,000) of the administrative penalty. The TCEQ penalty was calculated in accordance with the current penalty policy and based on an investigation of the four-hour air emissions event which occurred on September 19, 2009 from the overfilling of a railcar. Only one air violation was alleged in the TCEQ investigation. Under the current policy, the maximum penalty is \$10,000 per day and the Respondent is given a 20% deferral for an expedited settlement. Based

Mr. Bob Allen
Page 2

on comments received after publication notice in the *Texas Register*, the proposed order has been revised to include new technical requirements concerning retention and availability of the video recordings from the surveillance camera at the Track D and E Rail Loading Area.

In closing, I'd like to thank you for your interest in this matter and assure you that we share HCPHES' commitment to continuing to protect and improve the air quality in the State of Texas. The proposed Agreed Order is expected to be considered at the Commission's Agenda on August 11, 2010. Your name has been added to the mailing list to receive a copy of the final order, should the Commission adopt it. Should you have further concerns or comments related to the order, please do not hesitate to call me or Ms. Miriam Hall of my staff at (512) 239-1044.

Sincerely,


for

Bryan Sinclair, Director
Enforcement Division
Texas Commission on Environmental Quality

cc: Mr. Manuel Bautista, Manager, Air Section, Houston Regional Office
Mr. Jason Harris, Manager, Air Section, Houston Regional Office, TCEQ

Harris County

HCPHES

Public Health & Environmental Services

Herminda Palacio, M.D., M.P.H.
Executive Director
2223 West Loop South
Houston, Texas 77027
Tele: (713) 439-6000
Fax: (713) 439-6080

Michael Schaffer M.B.A.
Division Director
Environmental Public Health Division
107 N. Munger
Pasadena, TX 77506
Tele: (713) 740-8703
Fax: (713) 477-8963

April 26, 2010

Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

FAX: 512-239-2550

ATTN: Enforcement Coordinator Miriam Hall

RE: Comments on Proposed Settlement of Intercontinental Terminals Company, L.L.C. DOCKET NUMBER RN100210806' LOCATION: La Porte, Harris County, TYPE OF FACILITY: bulk liquid storage terminal; RULE VIOLATED: 30 TAC 116.115(c), Permit Number 1078, SC Number 5 and THSC §382.085(b) by failing to prevent overloading of a railcar; PENALTY \$10,000; Enforcement Coordinator Miriam Hall (512)-239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Houston, Texas 77023-1452, 713-767-3500 published in 35 TexReg 2643; March 26, 2010.

Dear Commissioners and Ms. Hall;

On September 19, 2009 at 9:50 a.m. Harris County Public Health & Environmental Services Department, Environmental Public Health Division (HCPHES) conducted an investigation of an unauthorized release at the Intercontinental Terminals Company (ITC) facility located at 1943 Independence Parkway South (formerly Battleground Road) in LaPorte, Texas in Harris County Precinct 2. The investigation determined that as a result of the overloading of a railcar more than 8,955 lbs toluene was spilled onto the ground and into the storm drains directly impacting the Harris County roadside ditch the is located on the south side of Tidal Road which borders the ITC facility. The spill also resulted in an air release of 1,452 lbs of toluene into the air. ITC owns and operates the facility located at 1943 Independence parkway south in LaPorte, Texas.

As a result of the investigation, on October 29, 2009 HCPHES issued ITC a violation notice for the following violations; 26 TWC 121(c), TCEQ Permit No.1078-Special Condition No. 5, 30 TAC 116.115(c), 30 TAC 116.115(b)(2)(F), 30 TAC 116.115(b)(2)(H)(i), THSC 382.085(b) and Agreed Final Judgment and Permanent Injunction No. 2007-28175 Section 4.5.

On January 12, 2010 Harris County Public Health & Environmental Services forwarded the investigation report and Violation Notice for the September 19, 2009 Intercontinental Terminals emission event and spill to the Harris County Attorney's Office for an enforcement action. This

Comments on Proposed Settlement of ITC docket # RN100210806
April 26, 2010

violation joined previously forwarded violations on this company and a lawsuit was filed on March 15, 2010. The Texas Commission on Environmental Quality began an enforcement action on the facility despite the fact that Harris County was actively pursuing enforcement for the same event. The Texas Water Code Section 7.051 states that the state may assess a penalty if:

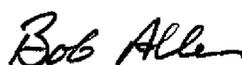
“a county, political subdivision, or municipality has not instituted a lawsuit and is not diligently prosecuting that lawsuit under Subchapter H against the same person for the same violation.”

Harris County continues to actively pursue prosecution of this emission event and spill. Moreover, the impacts from this event were to Harris County and the appropriate venue for resolution of the enforcement action is through the local program enforcement process. In this way any penalties assessed benefit the people of Harris County who suffered the harm from the emissions and spill associated with this incident and additionally Harris County has an opportunity to put forth injunctive language protective of Harris County residents.

HCPHES is requesting that the commission withdraw or withhold consent to the proposed ITC order based on the fact that Harris County has filed a lawsuit regarding this matter.

If you have any questions concerning this request please contact Compliance Manager Jennifer L. Wheeler at 713-740-8721.

Sincerely,



Bob Allen
Manager, Permits & Technical Services

JLW/jlw

cc: Commissioner Sylvia Garcia, Precinct Two
Gail Miller, Assistant Deputy Commissioner, Precinct Two
Herminia Palacio, M.D., M. P.H., Executive Director, Harris County Public Health &
Environmental Services Department
Michael Schaffer, M.B.A., Director, Environmental Public Health Division
Rock Owens, Chief, Environmental Section, Harris County Attorney's Office

before any threat of enforcement existed and that best management practices would include devices that could detect and prevent overfilling of a railcar. The TCEQ Notice of Enforcement was issued on December 17, 2009. ITC had two overfill detection/auto-shutoff devices in place which were rendered ineffective due to operator error. Adding a surveillance camera gives an additional method of monitoring loading operations instead of relying totally on instrumentation. Additional operator qualifications, training, and operating procedures should reduce the occurrence of operator error. However, based on Harris County's comments, the order has been revised to include a 30-day retention of all video footage from the surveillance camera and a three-year retention for all videos from the day of any emission events and/or spills and the cleanup of these incidents.

In Paragraphs 5 and 6 of the letter, Harris County stated that the proposed settlement does not compensate Harris County for the resources it expended in its investigation and enforcement efforts, that the TCEQ enforcement policy is ineffective in protecting the resources of the state, and that if this order becomes final, it may preclude Harris County from seeking additional injunctive relief or from receiving any compensation for the damage to the local environment. Again, the penalty was calculated under the current enforcement policy and statutory limit of \$10,000 per day per violation. Harris County may sue for any violations not addressed in the proposed order.

In Paragraph 7, Harris County questions the TCEQ decision to use an order containing "no admission of liability" (1660 order) rather than the containing an admission of liability (findings order). Under current policies, TCEQ staff determined that the alleged violation does not meet the criteria for a findings order; thus, a 1660 order is proposed.

In the letter dated May 10, 2010, Harris County stated that the TCEQ did not take a TCEQ investigation conducted on February 2, 2010 into account when determining the corrective action or the amount of penalty appropriate for the September 19, 2009 event. During the investigation, the inspector reviewed 16 non-reportable emissions events from December 2008 to December 2009. The investigator does state that ITC did not meet the defense criteria for the events due to a pattern of "poor maintenance on lines and hoses." The current case was developed and draft documents prepared prior to the February 2, 2010 investigation. Although enforcement staff was unaware of the investigation during the development of the case, the investigation does not warrant rejecting the current settlement. No Notice of Violation or Notice on Enforcement was issued as a result of the investigation. The current enforcement case was not the result of poor maintenance on lines and hoses.

In the May 10, 2010 letter, Harris County alleged that TCEQ did not fully investigate the spill because the on-site investigation was conducted one month after the spill and that TCEQ failed to interview all the employees. The current enforcement action was the result of an air emissions event investigation and developed under current enforcement procedures, policies, and guidelines. Harris County may sue for any violations not addressed in the proposed order.

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 15, 2010

Mr. Vince Ryan, County Attorney
Mr. Rock Owens, Chief, Enforcement Division
Harris County Attorney's Office
Enforcement Division
1019 Congress, 15th Floor
Houston, Texas 77002

Re: Comments Received, Proposed Agreed Enforcement Order
Intercontinental Terminals Company LLC
RN100210806; Docket No. 2010-0065-AIR-E; Enforcement Case No. 38978

Dear Mr. Ryan and Mr. Owens:

On April 26 and May 10, 2010, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") received letters from the Harris County Attorney's Office ("Harris County"), dated April 23 and May 10, 2010, respectively, that were in opposition to the above-referenced proposed Agreed Order related to Intercontinental Terminals Company LLC ("ITC") located in La Porte, Texas. Specifically, Harris County requested that the Commission reject the proposed settlement. The County's letters have been forwarded to the TCEQ's Office of the General Counsel such that the Commissioners can consider the County's comments regarding the proposed order.

The TCEQ's Executive Director and ITC agreed on the terms of the proposed order on February 24, 2010. Accordingly, ITC was assessed an administrative penalty of Ten Thousand Dollars (\$10,000), of which Two Thousand Dollars (\$2,000) has been deferred in accordance with our expedited order process. ITC has paid Eight Thousand Dollars (\$8,000) of the administrative penalty.

In the letter dated April 23, 2010, Harris County does not support the proposed order for reasons given in seven numbered paragraphs. The first three paragraphs state that the penalty is too low due to repeat violations, below the maximum penalty that could be assessed, and does not include a Texas Water Code violation. The TCEQ penalty was calculated in accordance with the current penalty policy and based on an investigation of the four-hour air emissions event which occurred on September 19, 2009 from the overfilling of a railcar. Only one air violation was alleged in the TCEQ investigation. Under the current policy, the maximum penalty is \$10,000 per day and the Respondent is given a 20% deferral for an expedited settlement.

In the letter, under Paragraph 4, Harris County alleged that the proposed corrective actions are inadequate. On January 18, 2010, ITC installed a surveillance camera at the Track D and E Rail Loading Area to give key personnel the opportunity to view all loading spots 24 hours a day, and by January 22, 2010, revised the Railroad Loading Checklists, operator qualification exams, and operating procedures and conducted operator training on the new procedures and checklists. Harris County claims that these actions occurred

Mr. Ryan and Mr. Owens
Page 3

In closing, I'd like to thank you for your interest in this matter and assure you that we share Harris County's commitment to continuing to protect and improve the air quality in the State of Texas. The proposed Agreed Order is expected to be considered at the Commission's Agenda on August 11, 2010. Your name has been added to the mailing list to receive a copy of the final order, should the Commission adopt it. Should you have further concerns or comments related to the order, please do not hesitate to call me or Ms. Miriam Hall of my staff at (512) 239-1044.

Sincerely,



for Bryan Sinclair, Director
Enforcement Division
Texas Commission on Environmental Quality

cc: Mr. Manuel Bautista, Manager, Air Section, Houston Regional Office
Mr. Jason Harris, Manager, Air Section, Houston Regional Office, TCEQ



The Office of Vince Ryan
County Attorney

April 23, 2010

Texas Commission on Environmental Quality
Central Office
P.O. Box 13087
Austin, Texas 78711-3087

VIA Regular US Mail
Certified Mail RRR
FAX: 512-239-2550

ATTN: Enforcement Coordinator Miriam Hall

RE: Comments on Proposed Settlement of Intercontinental Terminals Company, L.L.C. DOCKET NUMBER RN100210806' LOCATION: La Porte, Harris County, TYPE OF FACILITY: bulk liquid storage terminal; RULE VIOLATED: 30 TAC 116.115(c), Permit Number 1078, SC Number 5 and THSC §382.085(b) by failing to prevent overloading of a railcar; PENALTY \$10,000: Enforcement Coordinator Miriam Hall (512)-239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Houston, Texas 77023-1452, 713-767-3500 published in 35 *TexReg* 2643; March 26, 2010.

Dear Commissioners and Ms. Hall;

On September 19, 2009 at 9:50 a.m., personnel from the Harris County Public Health & Environmental Services Department, Environmental Public Health Division, were called to the Intercontinental Terminals Company (ITC) facility located at 1943 Independence Parkway South (formerly Battleground Road) in LaPorte, Texas (Precinct 2) to conduct an investigation of a report of an unauthorized release of more than 8,955 lbs toluene onto the ground and into the storm drains in the area, and 1,452 lbs of toluene into the air as the result of overloading a rail car. ITC owns and operates the facility located at 1943 Independence parkway south in LaPorte, Texas. Previously Harris County sued ITC for a number of violations that resulted in releases and spills at their facility. That case was settled and an agreed final judgment and permanent injunction

was entered as a result, requiring ITC to use its best efforts to avoid future violations. Harris County believes the most recent violations breach that agreement.

In addition, ITC has had numerous violations over the years at the facility in question that have been attributed to operator error and that have resulted in the release of toxic chemicals into the environment. Specifically, on no fewer than six occasions since 2007, Harris County and/or the TCEQ have investigated violations that involved significant amounts of benzene, toluene and 1,3 butadiene.

By way of the settlement referenced above, under the provisions of Texas Water Code Section 7, Subchapter C, the Texas Commission on Environmental Quality proposes to settle claims for violations of 30 TAC 116.115(c), Permit Number 1078, Standard Condition Number 5 and THSC §382.085(b) which were also raised by Harris County in its lawsuit filed on March 16, 2010 in Cause No. 2010-16782 in the 125th (Transferred to the 157th) Court of Harris County, Texas pertaining to the huge chemical spill for violations 30 TAC 116.115(c), Permit Number 1078, Standard Condition Number 5 and THSC §382.085(b) cause by failing to prevent overloading of a railcar.

Harris County asserts that the proposed settlement is not in the best interests of the residents and citizens of the State of Texas and Harris County for the following reasons:

1. The proposed administrative penalty of \$10,000.00 is not appropriate with respect to the violations committed by the company. Intercontinental Terminals has had other serious releases since 2007 and as a repeat violator should not be offered such a low “cost of doing business” penalty.

2. The proposed penalty is only 1/3 of the maximum penalty that could be assessed for three violations and the agency has failed to cite all of the violations that occurred and has failed to specify those that did occur. These failures have resulted in a “low ball” settlement number and to make matters worse the proposed order would defer \$2,000.00 of the penalty to insure compliance with requirements that have already taken place.
3. The proposed settlement does not include any penalty for the serious Water Code violation that occurred when the 8,955 lbs toluene spilled onto the ground and entered into a storm drain and then into the Tidal Road, roadside ditch.
4. The proposed corrective measures are inadequate
 - a. On January 18, 2009, installed a surveillance camera at the Track D and E Rail Loading Area to give key personnel the opportunity to view all loading spots 24 hours a day because this does not address best management practices that would include the installation of devices that could detect and prevent overfilling and it occurred before any threat of enforcement existed, in other words, there is no reason to believe this action was undertaken as a result of the incident in question.
 - b. By January 22, 2009, revised the Railroad Loading Checklists, operator qualification exams, and operating procedures and conducted operator training on the new procedures and checklists. This

operational change does not address best management practices as would the installation of devices that could detect and prevent overfilling. This operational change also, occurred before any threat of enforcement existed, in other words, there no reason to believe this action was undertaken as a result of the incident in question.

5. The proposed settlement does not compensate Harris County for the resources it expended in its investigation and enforcement efforts and can the State of Texas is precluded from recovering these costs in an Administrative Order as provided by the Texas Water Code. The Texas Legislature saw fit to make possible the recovery of investigative costs incurred by local and state entities and a provision requiring such should be a part of every administrative settlement.
6. The Texas Commission on Environmental Quality's Administrative Penalty policy and practices is not being used to conserve the natural resources of the state and to protect the environment as it is required to do by declaration of policy. Damage to the environment in Harris County is not deterred by a penalty policy that is looked upon as "a cost of doing business" by industry and if this settlement is allowed to become final it may be argued that it precludes Harris County from seeking additional injunctive relief or from receiving any compensation for the damaged caused to the local environment.
7. Past violations and the conditions surrounding this incident do not warrant a provision in the settlement proposal that allows the company

to escape an admission of liability. Considering the low penalty and the inadequate remedial provisions, there is insufficient consideration for “no admission of liability” clause in the language of the proposed settlement.

For the reasons expressed above, Harris County and the Harris County Attorney respectfully request the Commission reject the proposed settlement.

Please present and act on these comments in accordance with Chapter 7 of the TWC § 7.075(b) in the due course of the business of your agency. If you have any questions concerning our comments, please contact the undersigned.

Respectfully submitted

VINCE RYAN
Harris County Attorney

By Rock Owens
Chief, Environmental Division



RECEIVED
MAY 12 2010
ENFORCEMENT DIVISION

The Office of Vince Ryan
County Attorney

May 10, 2010

Texas Commission on Environmental Quality
Central Office
P.O. Box 13087
Austin, Texas 78711-3087

Vis Facsimile @ 512-239-2550,
Certified Mail 7009 0820 0002 3403 5171
Return Receipt Requested & Regular U.S. Mail

ATTN: Enforcement Coordinator Miriam Hall

RE: Supplemental Comments on Proposed Settlement of Intercontinental Terminals Company, L.L.C.; DOCKET NUMBER RN100210806'; LOCATION: La Porte, Harris County, TYPE OF FACILITY: bulk liquid storage terminal; RULE VIOLATED: 30 TAC 116.115(c), Permit Number 1078, SC Number 5 and THSC § 382.085(b) by failing to prevent overloading of a railcar; PENALTY \$10,000; Enforcement Coordinator Miriam Hall (512)-239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Houston, Texas 77023-1452, 713-767-3500 published in 35 *TexReg* 2643; March 26, 2010.

Dear Commissioners and Ms. Hall:

On February 2, 2010 the Texas Commission on Environmental Quality conducted a compliance inspection of the Intercontinental Terminals facility and determined that from December 2008 to December 2009 there were 16 non-reportable emission events and, that while these events did not exceed certain parameters, they indicated that when taken together they did not meet the demonstration criteria as they were mainly due to a pattern of poor maintenance and operation practices. (See attached TCEQ dated 2/2/2010). This investigation was not taken into account in determining the corrective action or the amount of the penalty appropriate for the September 19, 2009 event. Further, a TCEQ report filed 2/2/2010 finding poor management and operation practices completely negates the agency's own finding in the investigation of the 9/12/09 event which concluded operations and maintenance was not a problem.

Texas Commission on Environmental Quality
Enforcement Coordinator Miriam Hall
Re: Supplemental Comments on Proposed Settlement of ITC
May 10, 2010
Page Two

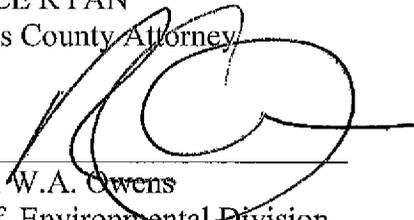
In addition, the Texas Commission on Environmental Quality did not fully investigate the spill that occurred on September 19, 2009. It did not conduct an onsite investigation until October 19, 2009, one month after the spill. (See attached TCEQ report dated October 19, 2009). Harris County believes the TCEQ failed to interview all of the employees allegedly involved in the event, and specifically the agency failed to interview Mr. Tom Atkins, the employee allegedly responsible for the spill.

For the supplemental reasons expressed above, Harris County and the Harris County Attorney respectfully request the Commission reject the proposed settlement.

Please present and act upon these comments in the due course of the business of your agency.

Respectfully submitted,

VINCE RYAN
Harris County Attorney

By: 
Rock W.A. Owens
Chief, Environmental Division

VR:RWAO:db
Attachments



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	21-Dec-2010	Screening	12-Jan-2010	EPA Due	
	PCW	25-May-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Intercontinental Terminals Company LLC
Reg. Ent. Ref. No.	RN100210806
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	38978	No. of Violations	1
Docket No.	2010-0065-AIR+E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Miriam Hall
		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** **\$5,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 154.0% Enhancement **Subtotals 2, 3, & 7** **\$7,700**

Notes The penalty was enhanced for six same or similar NOVs, 15 other NOVs, two 1660 orders, one findings order, and one court order. The penalty was reduced for one Notice of Audit.

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 \$112
Approx. Cost of Compliance \$4,650
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$12,700**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$12,700**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$10,000**

DEFERRAL 20.0% Reduction **Adjustment** **-\$2,000**

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 **\$8,000**

Screening Date: 12-Jan-2010

Docket No. 2010-0065-AIR-E

PGW

Respondent: Intercontinental Terminals Company LLC

Policy Revision 2 (September 2002)

Case ID No. 38978

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN100210806

Media [Statute] Air

Enf. Coordinator: Miriam Hall

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)	6	30%
	Other written NOVs	15	30%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	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	1	25%
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)	1	30%
	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)	1	-1%
	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%
<i>Please Enter Yes or No</i>			
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) 154%

>> 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 for six same or similar NOVs, 15 other NOVs, two 1660 orders, one findings order, and one court order. The penalty was reduced for one Notice of Audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 154%

Screening Date 12-Jan-2010

Docket No. 2010-0085-AIR-E

PCW

Respondent Intercontinental Terminals Company LLC

Policy Revision 2 (September 2002)

Case ID No. 38978

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100210806

Media [Statute] Air

Enf. Coordinator Miriam Hall

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 116.115(c), Permit No. 1078, Special Condition No. 5, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent the overloading of a railcar resulting in the unauthorized release of 1,452 pounds of toluene, a hazardous air pollutant, during a four-hour emissions event on September 19, 2009 (Incident No. 129623). Because the event was avoidable due to an operator failing to tighten bolts on a hatch and leaving the area during loading, the demonstrations for an affirmative defense in 30 Tex. Admin. Code § 101.222 were not met.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant emissions which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1

Number of violation days 1

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

One monthly event is recommended for the violation which occurred on September 19, 2009.

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 \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$112

Violation Final Penalty Total \$12,700

This violation Final Assessed Penalty (adjusted for limits) \$10,000

Economic Benefit Worksheet

Respondent: Intercontinental Terminals Company LLC
Case ID No.: 38978
Reg. Ent. Reference No.: RN100210806
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
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Delayed Costs

Equipment	\$2,500	19-Sep-2009	18-Jan-2010	0.33	\$3	\$55	\$58
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	\$500	19-Sep-2009	30-Sep-2010	1.03	\$28	n/a	\$28
Training/Sampling	\$1,650	19-Sep-2009	22-Jan-2010	0.34	\$28	n/a	\$28
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated equipment cost of installing a surveillance camera at the D and E Rail loading area and the estimated cost for revising checklists, operating procedures, and additional training from the date the violation occurred to completion date. The additional cost of maintaining digital records from the surveillance camera from violation date to 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

\$4,650

TOTAL

\$112

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603186495 Intercontinental Terminals Company LLC	Classification: AVERAGE	Rating: 1.97
Regulated Entity:	RN100210806 INTERCONTINENTAL TERMINALS DEER PARK TERMINAL	Classification: AVERAGE	Site Rating: 1.97

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG0403N
	AIR OPERATING PERMITS	PERMIT	1061
	WASTEWATER	PERMIT	WQ0001984000
	WASTEWATER	PERMIT	TPDES0068349
	WASTEWATER	PERMIT	TX0068349
	AIR NEW SOURCE PERMITS	REGISTRATION	91627
	AIR NEW SOURCE PERMITS	REGISTRATION	1797
	AIR NEW SOURCE PERMITS	REGISTRATION	1971
	AIR NEW SOURCE PERMITS	REGISTRATION	2837
	AIR NEW SOURCE PERMITS	PERMIT	11781
	AIR NEW SOURCE PERMITS	REGISTRATION	13674
	AIR NEW SOURCE PERMITS	REGISTRATION	14296
	AIR NEW SOURCE PERMITS	REGISTRATION	16015
	AIR NEW SOURCE PERMITS	REGISTRATION	10581
	AIR NEW SOURCE PERMITS	REGISTRATION	15075
	AIR NEW SOURCE PERMITS	REGISTRATION	22980
	AIR NEW SOURCE PERMITS	REGISTRATION	24140
	AIR NEW SOURCE PERMITS	REGISTRATION	24909
	AIR NEW SOURCE PERMITS	REGISTRATION	31860
	AIR NEW SOURCE PERMITS	REGISTRATION	35631
	AIR NEW SOURCE PERMITS	REGISTRATION	43548
	AIR NEW SOURCE PERMITS	REGISTRATION	44392
	AIR NEW SOURCE PERMITS	REGISTRATION	45706
	AIR NEW SOURCE PERMITS	REGISTRATION	47853
	AIR NEW SOURCE PERMITS	REGISTRATION	50149
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG0403N
	AIR NEW SOURCE PERMITS	REGISTRATION	52721
	AIR NEW SOURCE PERMITS	REGISTRATION	76266
	AIR NEW SOURCE PERMITS	AFS NUM	4820100153
	AIR NEW SOURCE PERMITS	PERMIT	1078
	AIR NEW SOURCE PERMITS	REGISTRATION	74105
	AIR NEW SOURCE PERMITS	REGISTRATION	86193
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1011622
	VOLUNTARY CLEANUP PROGRAM	ID NUMBER	1269
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD073912974
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	30966
	WATER LICENSING	LICENSE	1011622
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	30966
	STORMWATER	PERMIT	TXR05X836
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HG0403N

Location: 1943 INDEPENDENCE PKWY S, LA PORTE, TX, 77571

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: January 26, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 21, 2005 to January 21, 2010

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

Name: Miriam Hall Phone: (512) 239-1044

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.

Effective Date: 11/06/2005

ADMINORDER 2005-0486-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: Special Condition No. 1 PERMIT

Description: Failure to prevent 1,127 pounds of unauthorized butadiene emissions from the tank 50-2 dryer pressure relief valve during an emissions event on August 16, 2004 that lasted four minutes.

Effective Date: 03/19/2007

ADMINORDER 2006-1017-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: Permit No. 1078, Special Condition 14 PERMIT
Permit No.1078 Special Condition No. 5 PERMIT

Description: Failed to prevent unauthorized emissions and to route all emissions from Storage Tank 50-2 to the TK 50-2 Flare, emissions point number ("EPN") FL-50-2 (Incident 71787).

Effective Date: 10/18/2009

ADMINORDER 2009-0500-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THSC Chapter 382 382.085(b)

Rqmt Prov: 1078, Special Condition 5 PERMIT

Description: Failure to prevent an avoidable emissions event.

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	01/24/2005	(385327)
2	02/21/2005	(341749)
3	02/23/2005	(385325)
4	03/22/2005	(385326)
5	04/22/2005	(423378)
6	05/24/2005	(380693)
7	05/24/2005	(423379)
8	06/21/2005	(423380)
9	07/22/2005	(444195)
10	08/09/2005	(403880)
11	08/23/2005	(444196)
12	09/02/2005	(404693)
13	09/23/2005	(444197)
14	10/21/2005	(434379)
15	10/24/2005	(474605)
16	10/24/2005	(474606)
17	11/21/2005	(474607)
18	12/27/2005	(474608)
19	01/25/2006	(474609)
20	02/16/2006	(437127)
21	02/21/2006	(455166)
22	02/21/2006	(474602)
23	02/28/2006	(457243)

24	03/27/2006	(474603)
25	03/30/2006	(454492)
26	04/07/2006	(474604)
27	05/18/2006	(502372)
28	05/30/2006	(467313)
29	05/30/2006	(467405)
30	05/30/2006	(467456)
31	05/30/2006	(467474)
32	06/20/2006	(502373)
33	07/05/2006	(464712)
34	07/19/2006	(502374)
35	08/15/2006	(531029)
36	08/21/2006	(524690)
37	10/04/2006	(513041)
38	10/06/2006	(531030)
39	10/12/2006	(524691)
40	10/19/2006	(524692)
41	10/19/2006	(524693)
42	11/21/2006	(549640)
43	12/11/2006	(533506)
44	12/20/2006	(549641)
45	02/14/2007	(534906)
46	02/20/2007	(549639)
47	03/20/2007	(583591)
48	04/20/2007	(583592)
49	05/08/2007	(542716)
50	05/21/2007	(583593)
51	06/18/2007	(583594)
52	06/20/2007	(583595)
53	08/20/2007	(603993)
54	08/31/2007	(566945)
55	09/18/2007	(603994)
56	10/15/2007	(572860)
57	10/15/2007	(572912)
58	10/18/2007	(603995)
59	10/18/2007	(603996)
60	11/02/2007	(595572)
61	11/02/2007	(596438)
62	11/05/2007	(566950)
63	11/19/2007	(622871)
64	11/27/2007	(609671)
65	12/17/2007	(622872)
66	02/01/2008	(611820)
67	02/13/2008	(614533)
68	02/20/2008	(674320)
69	03/19/2008	(674321)
70	04/18/2008	(674322)
71	04/18/2008	(674323)
72	05/20/2008	(692665)
73	06/20/2008	(692666)
74	07/23/2008	(681834)
75	08/07/2008	(686235)
76	08/20/2008	(713798)
77	09/19/2008	(713799)
78	10/09/2008	(700249)
79	10/20/2008	(713800)
80	10/20/2008	(713801)
81	11/20/2008	(729808)
82	12/11/2008	(703617)

83 12/19/2008 (729809)
 84 12/30/2008 (721525)
 85 12/30/2008 (721707)
 86 02/20/2009 (753029)
 87 03/24/2009 (753030)
 88 03/25/2009 (705943)
 89 04/20/2009 (753031)
 90 04/20/2009 (753032)
 91 04/20/2009 (753033)
 92 05/06/2009 (741357)
 93 05/20/2009 (770610)
 94 07/22/2009 (747695)
 95 08/19/2009 (748952)
 96 08/25/2009 (766295)
 97 10/14/2009 (779062)
 98 11/05/2009 (780325)
 99 12/16/2009 (780124)
 100 12/21/2009 (785798)
 101 12/22/2009 (785678)

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

Date: 01/31/2005 (385325) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 02/28/2005 (385326) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 03/31/2005 (423378) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 05/24/2005 (380693)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 101, SubChapter F 101.201(g)
 Description: ITC failed to submit the initial notification electronically using the online form on the
 commission's secure web server.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)
 5C THC Chapter 382, SubChapter A 382.085(b)
 Description: ITC failed to prevent the increased flow, during a loading operation, into Tank 105-3.
 Date: 09/02/2005 (404693) CN603186495
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter C 115.212(a)(3)(B)
 Description: The RE failed to detect a leak on a transferline.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THC Chapter 382, SubChapter A 382.085(b)
 No. 1078 SC1.J PERMIT
 Description: Failure to operated without visible liquid leaks or spills.
 Date: 10/21/2005 (434379)
 Self Report? NO Classification: Moderate
 Citation: #1078 PERMIT
 30 TAC Chapter 116, SubChapter B 116.115(b)
 5C THC Chapter 382, SubChapter A 382.085(b)
 Description: ITC failed to prevent a mechanical failure which resulted in a release of 85 pounds of
 unauthorized 1,3 butadiene emissions from an emergency atmospheric relief valve for a
 duration of 5 minutes.

Date: 03/29/2006 (454492) CN603186495
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to maintain compliance with the permit effluent limits for biochemical oxygen demand (BOD5).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)
 Description: Failure to adequately manage solid waste.

Date: 05/31/2006 (502373) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: 08/15/2006 (531029) CN603186495
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 10/06/2006 (531030) CN603186495
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 03/31/2007 (583592) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2007 (583593) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2007 (566945) CN603186495
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 115, SubChapter C 115.212(a)(3)(B)
 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter D 382.085(b)
 FOP O-01061, ST&C 14 OP
 FOP O-01061, ST&C 1A OP
 FOP O-01061, ST&C 5.B.i OP
 Permit 1078, SC 1J PERMIT
 Description: Failure to prevent leaks during loading and unloading operations.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter D 382.085(b)
 FOP O-01061, ST&C 14 OP
 Permit 1078, Special Condition 5 PERMIT
 Description: Failure to operate equipment within the short-term emissions limits defined in the MAER Table of Permit 1078.

Date: 10/31/2007 (622871) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter
 Date: 11/28/2007 (609671) CN603186495
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 101, SubChapter F 101.201(b)(1)(H)

Description: Failure to identify the permit in the final report.
 Date: 02/14/2008 (614533) CN603186495
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)

Description: Failure to meet the minimum pressure tank capacity requirement.
 Date: 07/23/2008 (681834) CN603186495
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT Kb 60.112b(a)(1)(i)
 5C THSC Chapter 382 382.085(b)
 ST&C 1A PERMIT

Description: Failure to maintain the internal floating roof of tanks TK100-24 and TK80-14 floating on the liquid surface at all times.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
 30 TAC Chapter 122, SubChapter B 122.145(2)(C)
 5C THSC Chapter 382 382.085(b)
 GT&C PERMIT

Description: Failure to submit the first semi-annual deviation report within 30 days after the end of the certification period for the period of March 8, 2007 through September 7, 2007.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 115, SubChapter C 115.212(a)(3)(B)
 30 TAC Chapter 115, SubChapter C 115.212(a)(6)(B)
 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THSC Chapter 382 382.085(b)
 SC 1J PERMIT
 ST&C 14 PERMIT
 ST&C 1A PERMIT

Description: Failure to prevent VOC leakage during loading and unloading operations.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A)
 5C THSC Chapter 382 382.085(b)
 GT&C PERMIT

Description: Failure to include all instances of deviations in the second semi-annual deviation report dated March 28, 2008.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
 30 TAC Chapter 122, SubChapter B 122.145(2)(A)
 30 TAC Chapter 122, SubChapter B 122.146(5)(D)
 5C THSC Chapter 382 382.085(b)
 GT&C PERMIT

Description: Failure to identify all other terms and conditions of the permit for which compliance was not achieved.
 Date: 09/30/2008 (713800) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter
 Date: 11/30/2008 (729809) CN603186495
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter
 Date: 07/22/2009 (747695) CN603186495
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 ELMR, No. 1, p. 2 & 2a PERMIT

Description: Failure to maintain compliance with the permitted effluent limits for biochemical oxygen demand and total zinc.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
 Description: Failure to properly complete the Discharge Monitoring Reports (DMRs).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 MRR, No. 7c, p. 6 PERMIT
 Description: Failure to submit the noncompliance notifications for effluent violations which deviated from the permitted limit by more than 40%.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Other Requirements, No. 23, p. 21 PERMIT
 Description: Failure to maintain Table 2 for Outfall 002.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Other Requirements, No. 17, p. 18-19 PERMIT
 Description: Failure to correctly collect composite volatile samples.

Self Report? NO Classification: Minor
 Citation: 2A TWC Chapter 5, SubChapter A 5.134(a)
 Description: Failure to utilize a National Environmental Laboratory Accreditation Program (NELAP) accredited laboratory with accreditation for analytical data reported to the Agency.

Date: 08/31/2009 (759062)

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter F 115.541(a)(1)(B)
 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THSC Chapter 382 382.085(b)
 NSR 1078 SC 24(C) PERMIT
 Description: ITC failed to meet the control efficiency for degassing operations.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter F 115.542(a)(6)
 30 TAC Chapter 115, SubChapter F 115.546(1)(D)
 5C THSC Chapter 382 382.085(b)
 Description: ITC failed to measure and record the volatile organic compound (VOC) concentration or record the lower explosive limit (LEL) during degassing activities.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter F 115.546(1)(B)
 5C THSC Chapter 382 382.085(b)
 Description: ITC failed to record the quantity of volatile organic compound (VOC) in the storage tank during degassing operations.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter F 115.546(1)(C)
 5C THSC Chapter 382 382.085(b)
 Description: ITC failed to record the quantity of volatile organic compound (VOC) removed from the storage tank during degassing operations.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THSC Chapter 382 382.085(b)
 NSR 1078 SC 24(E) PERMIT
 Description: ITC failed to operate the degassing equipment such that a volume of purge gas equivalent to twice that of the vapor space is passed through the control device.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THSC Chapter 382 382.085(b)
 NSR 1078 SC 24(F) PERMIT
 Description: ITC failed to calibrate the instrument used in degassing operations as required by Permit 1078.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 5C THSC Chapter 382 382.085(b)
 NSR 1078 SC 24(I) PERMIT
 Description: ITC failed to comply with the recordkeeping of the degassing operations as follows:
 Failure to record the activation and response times for the sampling instrument; failure to record the 1-minute average volatile organic compound (VOC) concentrations; failure to record the purge gas volume and/or vapor

space volumes.

F. Environmental audits.

Notice of Intent Date: 04/27/2006 (466867)
No DOV Associated

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
INTERCONTINENTAL TERMINALS
COMPANY LLC
RN100210806

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§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-0065-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 Intercontinental Terminals Company LLC ("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 bulk liquid storage terminal at 1943 Independence Parkway South in La Porte, Harris 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 Ten Thousand Dollars (\$10,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid Eight Thousand Dollars (\$8,000) of the administrative penalty and Two Thousand Dollars (\$2,000) 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 the Respondent has implemented the following corrective measures at the Plant:
 - a. On January 18, 2010, installed a surveillance camera at the Track D and E Rail Loading Area to give key personnel the opportunity to view all loading spots 24 hours a day; and
 - b. By January 22, 2010, revised the Railroad Loading Checklists, operator qualification exams, and operating procedures and conducted operator training on the new procedures and checklists.
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 failed to prevent the overloading of a railcar resulting in the unauthorized release of 1,452 pounds of toluene, a hazardous air pollutant, during a four-hour emissions event on September 19, 2009 (Incident No. 129623), in violation of 30 TEX. ADMIN. CODE § 116.115(c), Permit No. 1078, Special Condition No. 5, and TEX. HEALTH & SAFETY Code § 382.085(b), as documented during an investigation conducted on October 21, 2009. Because the event was avoidable due to an operator failing to tighten bolts on a hatch and leaving the area during loading, the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 were not met.

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: Intercontinental Terminals Company LLC, Docket No. 2010-0065-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. Immediately upon the effective date of this Agreed Order, concerning video footage from the surveillance camera at the Track D and E Rail Loading Area:
 - i. Maintain all video recordings for 30 days;
 - ii. Archive and store for three years, all video footage from the day(s) an emissions event and/or spill occurred at the Track D and E Rail Loading Area and during the cleanup of the incident; and
 - iii. Provide the video recordings to the TCEQ upon request.
 - b. Within 30 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.i. through 2.a.iii. 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
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

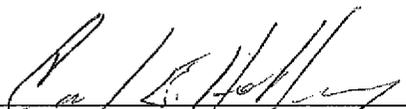
Date

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

6-21-10

Date

Carl E. Holley

Name (Printed or typed)
Authorized Representative of
Intercontinental Terminals Company LLC

Vice President, SHES & Regulatory

Title Compliance

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.

