

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-0107-MLM-E RN102037660 CASE NO. 37632**  
**RESPONDENT NAME: BRYAN IRON & METAL, LTD.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATIONS OCCURRED:</b> 2011 Highway 21 West, Bryan, Brazos County</p> <p><b>TYPE OF OPERATION:</b> scrap metal recycling facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired August 9, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492  <b>TCEQ Regional Contact:</b> Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001  <b>Respondent:</b> Mr. Melvin Lipsitz, Director, Bryan Iron &amp; Metal, LTD. P.O. Box 1175, Waco, Texas 76703  <b>Respondent's Attorney:</b> Mr. Kerry L. Haliburton, NAMAN, HOWELL, SMITH &amp; LEE, PLLC, 900 Washington, 7th Floor, P.O. Box 1470, Waco, Texas 76703-1470</p>		

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> N/A</p> <p><b>Date of Investigation Relating to this Case:</b> September 16, 2008</p> <p><b>Date of NOE Relating to this Case:</b> November 14, 2008</p> <p><b>Background Facts:</b> The EDRP was filed on August 19, 2009. Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on June 4, 2010.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>MLM:</b></p> <ol style="list-style-type: none"> <li>Failed to perform closure or remediation activities at an area of unauthorized discharge [TEX WATER CODE § 26.121 and 30 TEX. ADMIN. CODE §§ 335.4 and 335.8(b)(2)].</li> <li>Failed to conduct annual sampling and analysis of stormwater effluent for compliance with heavy metals limitations [30 TEX. ADMIN. CODE § 281.25(a)(4) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit ("TPDES MSGP") No. TXR05L476, Part III, Section D(1)(a)].</li> <li>Failed to maintain a rain gauge on-site or utilize a rain gauge located in the immediate vicinity of the Facility to determine when a representative storm event occurs and to record the representative events in a rain gauge monitoring log to be retained on-site and made available for review upon request [30 TEX. ADMIN. CODE § 281.25(a)(4) and TPDES MSGP No. TXR05L476, Part III, Section C(1)(c)].</li> </ol>	<p><b>Total Assessed:</b> \$8,662</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$8,662</p> <p>Respondent paid the administrative penalty in full.</p> <p><b>Site Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, begin conducting annual sampling and testing of stormwater effluent for compliance with heavy metal limitations.</li> <li>Within 15 days, maintain a rain gauge on-site or utilize a rain gauge in the immediate vicinity of the Facility to determine when representative storm events occur and record the representative storm events in a rain gauge monitoring log to be retained on-site and made available for review upon request.</li> <li>Within 60 days, submit to TCEQ a complete environmental site assessment of the Facility and adjacent property (1410 Rochester) to determine whether the release is subject to the Texas Risk Reduction Program ("TRRP"). If the release is subject to TRRP, Respondent shall comply with all applicable requirements of 30 TEX. ADMIN. CODE ch. 350.</li> <li>Within 15 days after the completion of each Ordering Provision, submit documentation to demonstrate compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	14-Nov-2008			
	<b>PCW</b>	29-Jul-2009	<b>Screening</b>	14-Nov-2008	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	BRYAN IRON & METAL, LTD.				
<b>Reg. Ent. Ref. No.</b>	RN102037660				
<b>Facility/Site Region</b>	9-Waco	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	37632	<b>No. of Violations</b>	3		
<b>Docket No.</b>	2009-0107-MLM-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Industrial and Hazardous Waste	<b>Enf. Coordinator</b>	Michael Meyer		
<b>Multi-Media</b>	Water Quality	<b>EC's Team</b>	Enforcement Team 7		
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$8,000</b>
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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.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$400</b>
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Notes: There was one NOV for same or similar violations during the previous five years.

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

<b>Good Faith Effort to Comply</b>	0.0% Reduction	<b>Subtotal 5</b>	<b>\$0</b>
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
Total EB Amounts	\$1,349	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$20,375		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$8,400</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	1.7%	<b>Adjustment</b>	<b>\$262</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend an adjustment to capture the avoided cost associated with Violation No. 2.

<b>Final Penalty Amount</b>	<b>\$8,662</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$8,662</b>
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$8,662</b>
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# Technical Review

(Confidential - Internal Use Only)  
Revised 3/20/08

## PACKET

### Left Pocket

- NOE
- EAR
- Investigation Report and Additional Evidence
- NOV(s)
- Central Registry Search Printout for Customer and Regulated Entity
- Secretary of State Printout, State Comptroller Status Printout
- Copy of Permit and/or Registration
- Outstanding Fee Check Report Printout
- Date-Duration Calculator

### Put 'X' If Included

x
x
x
x
x
x

### Right Pocket

- Penalty Calculation Worksheet(s)
- Compliance History(s)
- Proposed Agreed Order
- Order Cover Letter
- Other (list in box below)

### Put 'X' If Included

x
x
x
x

### Other Documents Included:

## INFORMATION

EC's First Name	Michael	EC's Last Name	Meyer	EC's Team	7
Respondent	BRYAN IRON & METAL, LTD.			Media	Industrial and Hazardous Waste
Docket Number	2009-0107-MLM-E			Case Number	37632

## BEFORE INITIAL CASE SUBMISSION

Investigation Date	November 7, 2007	Assigned Date	November 14, 2008
Initial Phone Call Date	December 16, 2008	Screening Date	November 14, 2008
Name of Person Contacted	Charles Johnson	Position/Title	Env. Manager
Inability To Pay Discussed?	No	Payment Plan Explained?	No
SEP Discussed?	No	Inability To Pay	Inability To Pay
In Compliance Before Mailout?	No	Compliance Actions Discussed?	No
Telephone Notes/Summary:	Media		

NOTE: Mention 30 Day Requirements for SEP and Inability To Pay

Is There A Delay In The Case?  Yes

### Explain

There were problems with the compliance history for this case as there were two customers associated to the same RN.

### Special Circumstances (i.e., special interest, complaints, etc.)

There have been complaints from an adjacent property owner who is alleging that historical stormwater runoff from the Respondent has resulted in soil contamination on his property. Sample results collected from the complainant's property on 11.7.07 indicated metals concentrations above background levels for chromium, copper and lead. The problem has been that the respondent re-routed its stormwater discharge back in 2004 and has not been conducting its required annual sampling for compliance with its permitted metals limitations over the years. Soil samples collected from the stormwater conveyance during the 9.16.08 investigation showed elevated metals concentrations for lead, chromium, and copper.

### Major/Minor Source Determination

There is no documentation to indicate this is a major source.

## INITIAL CASE SUBMISSION REVIEWED

Coordinator \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_ Team Leader \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

## AFTER INITIAL CASE SUBMISSION

Possible Changes	Use 'X'	Initials	Date	Explain
Now In Complete Compliance?				If yes, is this documented in Order?
Regional Concurrence Obtained?				
Additional Monitoring Required?				If yes, is this documented in Order? <b>Division Director approval needed.</b>
Additional/Revised TRs?				If yes, is this documented in Order? <b>Division Director approval needed.</b>
Payment Plan Provided?				If yes, is this documented in Order?
SEP Provided?				If yes, is this documented in Order?
SEP Declined By Respondent?				
Inability To Pay Application Sent?				
Inability To Pay Provided?				If yes, is this documented in Order?
Changed Respondent?				
Changed Violations/Penalty?				If yes, <b>Division Director approval needed.</b>
Compliance History?				If yes, <b>Division Director approval needed.</b>
Other Change To Mailout?				

### Negotiation Notes/Summary:

## REVISIONS TO PCW AND/OR ORDER

Coordinator \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_ Team Leader \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Note: Remember to ensure CCEDS is updated.

Screening Date 14-Nov-2008

Docket No. 2009-0107-MLM-E

PCW

Respondent BRYAN IRON & METAL, LTD.

Policy Revision 2 (September 2002)

Case ID No. 37632

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN102037660

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

### 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 ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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) 5%

#### >> 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

There was one NOV for same or similar violations during the previous five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 14-Nov-2008

Docket No. 2009-0107-MLM-E

PCW

Respondent BRYAN IRON & METAL, LTD.

Policy Revision 2 (September 2002)

Case ID No. 37632

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN102037660

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121 and 30 Tex. Admin. Code § 335.4 and § 335.8(b)(2)

Violation Description

Failed to perform closure or remediation activities at an area of unauthorized discharge, as documented during an investigation conducted on September 16, 2008. Specifically, soil samples collected from the Respondent's stormwater conveyance system and the adjacent property, during previous investigations, indicated elevated concentrations of copper, lead, and mercury.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual			x		25%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 60

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

Violation Base Penalty \$5,000

Two monthly events are recommended from the September 16, 2008 investigation to the November 14, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,079

Violation Final Penalty Total \$5,414

This violation Final Assessed Penalty (adjusted for limits) \$5,414

## Economic Benefit Worksheet

**Respondent** BRYAN IRON & METAL, LTD.  
**Case ID No.** 37632  
**Reg. Ent. Reference No.** RN102037660  
**Media** Industrial and Hazardous Waste  
**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)				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)	\$20,000	16-Sep-2008	15-Oct-2009	1.08	\$1,079	n/a	\$1,079

Notes for DELAYED costs

Estimated cost to conduct an environmental site assessment to determine the extent and gravity of the contamination and perform the necessary cleanup. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$20,000

**TOTAL**

\$1,079

**Screening Date** 14-Nov-2008 **Docket No.** 2009-0107-MLM-E **PCW**  
**Respondent** BRYAN IRON & METAL, LTD. *Policy Revision 2 (September 2002)*  
**Case ID No.** 37632 *PCW Revision April 29, 2008*  
**Reg. Ent. Reference No.** RN102037660  
**Media [Statute]** Industrial and Hazardous Waste  
**Enf. Coordinator** Michael Meyer

**Violation Number**

**Rule Cite(s)**  
 30 Tex. Admin. Code § 281.25(a)(4) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit (MSGP) No. TXR05L476, Part III, Section D(1)(a)

**Violation Description**  
 Failed to conduct annual sampling and analysis of stormwater effluent for compliance with heavy metals limitations, as documented during an inspection conducted on September 16, 2008. Specifically, the Respondent failed to sample and analyze its stormwater for compliance with the heavy metal limitations of its permit.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**  
 Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels protective of human health or environmental receptors.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input checked="" type="text" value="x"/>
single event	<input type="text"/>

**Violation Base Penalty**

An annual event is recommended for the calendar year 2007.

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

**Estimated EB Amount**

**Violation Final Penalty Total**

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

## Economic Benefit Worksheet

**Respondent** BRYAN IRON & METAL, LTD.  
**Case ID No.** 37632  
**Reg. Ent. Reference No.** RN102037660  
**Media** Industrial and Hazardous Waste  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### 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	\$250	1-Jan-2007	31-Dec-2007	1.00	\$12	\$249	\$262
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

The estimated cost to sample and analyze stormwater for compliance with permitted heavy metal limitations during the calendar year of 2007. The Date Required is the beginning of 2007 and the Final Date is the last day of 2007.

Approx. Cost of Compliance

\$250

**TOTAL**

\$262

Screening Date 14-Nov-2008

Docket No. 2009-0107-MLM-E

PCW

Respondent BRYAN IRON & METAL, LTD.

Policy Revision 2 (September 2002)

Case ID No. 37632

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN102037660

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and TPDES MSGP No. TXR05L476, Part III, Section C(1)(c)

Violation Description

Failed to maintain a rain gauge on-site or utilize a rain gauge located in the immediate vicinity of the site to determine when a representative storm event occurs and to record the representative events in a rain gauge monitoring log to be retained on-site and made available for review upon request, as documented during an investigation conducted on September 16, 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 percent of the rule requirement was not met

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 60 Number of violation days

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

Violation Base Penalty \$2,000

Two monthly events are recommended from the September 16, 2008 investigation to the November 14, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$2,166

This violation Final Assessed Penalty (adjusted for limits) \$2,166

## Economic Benefit Worksheet

**Respondent** BRYAN IRON & METAL, LTD.  
**Case ID No.** 37632  
**Reg. Ent. Reference No.** RN102037660  
**Media** Industrial and Hazardous Waste  
**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	\$25	16-Sep-2008	15-Nov-2009	1.16	\$0	\$2	\$2
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	\$100	15-Sep-2008	15-Nov-2009	1.17	\$6	n/a	\$6
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 to install a rain gauge on-site or in the vicinity of the site to determine when a storm event occurs and to maintain a rainfall gauge monitoring log. The Date Required is the September 16, 2008 investigation date and the Final Date is the projected 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

\$125

**TOTAL**

\$8

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603128927 Bryan Iron & Metal, Ltd.	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN102037660 BRYAN IRON & METAL CO	Classification: HIGH	Site Rating: 0.00
ID Number(s):	STORMWATER	PERMIT	TXR05L476
Location:	2011 HIGHWAY 21 W, BRYAN, TX, 77803		
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	February 19, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 20, 2004 to February 19, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Michael Meyer	Phone:	239 - 4492

## 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.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	03/01/2004	(263911)
2	08/02/2004	(274758)
3	04/23/2008	(614756)
4	07/23/2008	(682381)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date: 05/16/2005 (379229)

Self-Report? NO

Citation: 30 TAC Chapter 281, Subchapter A 281.25(a)(4)  
MSGP Part IV; Section B (Sector N) PERMIT

Description: Failure to conduct benchmark monitoring during the first, second, and third quarters during the 2003 and 2004 reporting periods.

Self Report? NO

Citation: 30 TAC Chapter 281, Subchapter A 281.25(a)(4)  
MSGP, Part III Section A(3) Permit

Description: Failure to include a certification that states that the facility's separate storm sewer system has been evaluated for the the presence of non storm water discharges and the ate discharge of non-permitted non-storm water does not occur.

Self-Report? NO Classification: Minor

Citation: 30 TAC Cahpter 281, Subchapter A 281.25(a)(4)  
MSGP, Part III, Section A(4)(b) PERMIT

Description: Failure to include the direction of storm water flow from exposed material to the final outfall in narrative description.

Self-Report? NO Classification: Minor

Citation: 30 TAC Chapter 281, Subchapter A 281.25(a)(4)

Description: Failure to include the direction of storm water flow from exposed material to the final outfall in narrative description.
  - 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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>BRYAN IRON &amp; METAL, LTD.;</b>	<b>§</b>	
<b>RN102037660</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

## **AGREED ORDER DOCKET NO. 2009-0107-MLM-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Bryan Iron & Metal, LTD. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Kerry L. Haliburton of the law firm NAMAN, HOWELL, SMITH & LEE, PLLC, appear before the Commission and together stipulate that:

1. Respondent owns and operates a scrap metal recycling facility located at 2011 Highway 21 West, Bryan, Brazos County, Texas (the "Facility"). The Facility involves the management and disposal of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. Respondent has discharged waste from the Facility into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of eight thousand six hundred sixty-two dollars (\$8,662.00) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). Respondent paid eight thousand six hundred sixty-two dollars (\$8,662.00) of the administrative penalty.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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**

1. During an investigation conducted on September 16, 2008, a TCEQ Waco Regional Office investigator documented that Respondent violated:
  - a. TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE §§ 335.4 and 335.8(b)(2), by failing to perform closure or remediation activities at an area of unauthorized discharge. Specifically, soil samples collected from Respondent's stormwater conveyance system and the adjacent property, during previous investigations, indicated elevated concentrations of copper, lead, and mercury;
  - b. 30 TEX. ADMIN. CODE § 281.25(a)(4) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit ("TPDES MSGP") No. TXR05L476, Part III, Section D(1)(a), by failing to conduct annual sampling and analysis of stormwater effluent for compliance with heavy metals limitations. Specifically, Respondent failed to sample and analyze its stormwater for compliance with heavy metal limitations of its permit; and

- c. 30 TEX. ADMIN. CODE § 281.25(a)(4) and TPDES MSGP No. TXR05L476, Part III, Section C(1)(c), by failing to maintain a rain gauge on-site or utilize a rain gauge located in the immediate vicinity of the Facility to determine when a representative storm event occurs and to record the representative events in a rain gauge monitoring log to be retained on-site and made available for review upon request.
2. Respondent received notice of the violations on or about November 19, 2008.

### **III. DENIALS**

Respondent generally denies each Allegation in Section II.

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and 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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Bryan Iron & Metal, LTD., Docket No. 2009-0107-MLM-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Respondent shall begin conducting annual sampling and testing of stormwater effluent for compliance with heavy metal limitations, in accordance with TPDES MSGP No. TXR05L476, Part III, Section D(1)(a);
  - b. Within 15 days of the effective date of this Agreed Order, Respondent shall maintain a rain gauge on-site or utilize a rain gauge in the immediate vicinity of the Facility to determine when representative storm events occur and record the representative storm events in a rain gauge

monitoring log to be retained on-site and made available for review upon request, in accordance with TPDES MSGP No. TXR05L746, Part III, Section C(1)(c);

- c. Within 60 days after the effective date of this Agreed Order, Respondent shall complete an environmental site assessment of the Facility and adjacent property (1410 Rochester) to determine whether the release is subject to the Texas Risk Reduction Program ("TRRP") rules in 30 TEX. ADMIN. CODE ch. 350. The environmental site assessment shall be conducted in accordance with TCEQ guidance document "Determining Which Releases are Subject to TRRP" revised October 21, 2003. The environmental site assessment, including remediation plans or justification for no further action, as applicable, shall be submitted for review and approval to:

Environmental Cleanup Section  
Remediation Division MC 137 or 221  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

If the release is subject to TRRP, Respondent shall comply with all applicable requirements of the TRRP found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE 350.33(1)); and Institutional Controls under Subchapter F and respond completely and adequately, as determined by the TCEQ, to all letter requests for information within 30 days after the date of such letters, or any other deadline specified in writing; and

- d. Within 15 days after the completion of each of the Ordering Provision Nos. 2.a., 2.b., and 2.c., Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the applicable Ordering Provision. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and

belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Mr. Frank Burleson, Waste Section Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until 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 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

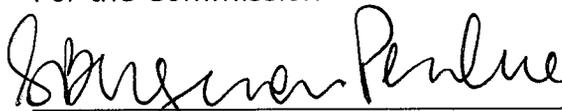
statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

7/22/2010

\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



\_\_\_\_\_  
Signature

6-4-10

\_\_\_\_\_  
Date

Charles Johnson

\_\_\_\_\_  
Name (Printed or typed)  
Authorized representative of  
Bryan Iron & Metal, LTD.

Vice-Pres

\_\_\_\_\_  
Title