

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-1460-AIR-E RN100219161 CASE NO. 38331**  
**RESPONDENT NAME: MITSUBISHI CATERPILLAR FORKLIFT AMERICA INC.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 2011 West Sam Houston Parkway North, Houston, Harris County

**TYPE OF OPERATION:** forklift manufacturing plant

**SMALL BUSINESS:**  Yes  No

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired August 23, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ SEP Coordinator:** Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2223

**TCEQ Enforcement Coordinator:** Ms. Kimberly Morales, Air Enforcement Section, MC R-12, (713) 767-3500

**TCEQ Regional Contacts:** Mr. Manuel Bautista, Houston Regional Office, MC R-12, (713) 767-3678  
Mr. Jason Harris, Houston Regional Office, MC R-12, (713) 767-3609

**Respondent:** Mr. Jay Gusler, Director, Operations, Mitsubishi Caterpillar Forklift America Inc., 2121 West Sam Houston Parkway North, Houston, Texas 77043

**Respondent's Attorney:** Not represented by counsel in this enforcement action.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint</p> <p><input checked="" type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 14, 2009</p> <p><b>Date of NOE Relating to this Case:</b> August 28, 2009</p> <p><b>Background Facts:</b> The EDRP was filed on February 11, 2010. Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on June 15, 2010.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>AIR:</b></p> <ol style="list-style-type: none"> <li>Failed to have a valid Title V permit [30 TEX. ADMIN. CODE § 122.121 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to submit complete and accurate annual emissions inventory questionnaires [30 TEX. ADMIN. CODE § 101.10(b)(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to identify the storage, loading, and unloading of VOCs in the applicable requirements summary of Federal Operating Permit ("FOP") No. O-01432 [30 TEX. ADMIN. CODE § 122.142(b)(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to identify and mark equipment with the potential to emit air contaminants to correspond with the plot plan and the Maximum Allowable Emission Rates Table ("MAERT") [30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), and Air Permit No. 22104, Special Condition No. 14].</li> </ol>	<p><b>Total Assessed:</b> \$105,590</p> <p><b>Total Deferred:</b> \$52,757</p> <p><input type="checkbox"/> Expedited Order</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><input checked="" type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$52,833</p> <p>Respondent paid \$52,833 of the administrative penalty. The remaining amount of \$52,757 shall be conditionally offset by the completion of two Supplemental Environmental Projects (SEPs).</p> <p><b>Site Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that Respondent has implemented the following corrective measures at the Plant:</p> <ol style="list-style-type: none"> <li>Submitted a Title V permit application on August 31, 2009;</li> <li>Submitted complete and accurate emissions inventories for 2006, 2007, and 2008 by December 15, 2009; and</li> <li>Identified the storage, loading, and unloading of VOCs in the applicable requirements summary of the FOP application submitted on August 31, 2009.</li> </ol> <p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Implement and complete the SEPs (<i>Harris County Ambient Air Pollutants Monitoring; Houston-Galveston Area Emissions Reduction Credit Organization</i>);</li> <li>Within 30 days, identify and mark equipment with the potential to emit to correspond to the plot plan MAERT;</li> <li>Within 45 days, submit written certification to demonstrate compliance with Ordering Provision No. 2.</li> <li>Respond completely and adequately to all requests for information concerning the Title V permit application within 30 days after the date of such requests, or by any other deadline specified in writing; and</li> <li>Within 180 days, submit written certification that either a Title V authorization to operate a forklift manufacturing facility has been obtained or that operation has ceased until such time that appropriate authorization is obtained.</li> </ol>

**Attachment A**  
**Docket Number: 2009-1460-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Mitsubishi Caterpillar Forklift America Inc.

**Penalty Amount:** One Hundred Five Thousand Five Hundred Ninety Dollars (\$105,590)

**Project 1 SEP Offset Amount:** Thirty-Two Thousand Seven Hundred Fifty-Seven Dollars (\$32,757)

**Project 1 Third-Party Recipient:** **Harris County Ambient and Meteorological Air Monitoring**

**Project 1 Type of SEP:** Pre-approved contribution

**Project 1 Location of SEP:** Harris County

**Project 2 SEP Offset Amount:** Twenty Thousand Dollars (\$20,000)

**Project 2 Third-Party Recipient:** **Houston-Galveston Area Emission Reduction Credit Organization (“AERCO”) Clean Cities/Clean Vehicles Program**

**Project 2 Type of SEP:** Pre-approved contribution

**Project 2 Location of SEP:** Texas Air Quality Control Region 216 Houston-Galveston

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform Supplemental Environmental Projects (“SEPs”). The SEP Offset Amounts are set forth above and such offsets are conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project 1 – Harris County Ambient Air Pollutants Monitoring

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be used by **Harris County** for the *Ambient and Meteorological Air Monitoring* as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used to install or retrofit, operate, maintain, and potentially expand air monitoring stations in Harris County to continuously monitor ambient air for total non-methane hydrocarbons and hazardous air pollutants (HAPs). Specifically, SEP Funds will be used to purchase equipment (such as automated canister samplers), hardware, software, and licenses to enable the monitoring. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

Project 2 –Houston-Galveston AERCO Clean Cities/ Clean Vehicles Program

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Houston-Galveston Area Emission Reduction Credit Organization (“AERCO”)**

for the *Clean Cities/Clean Vehicles Program* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP funds will be used to provide reimbursement to school districts, area transit agencies, or local governments in the Houston-Galveston non-attainment area to retrofit or replace older school buses with current model year buses or cleaner technology and for the incremental cost of replacing local government fleet vehicles with newer lower-emission vehicles, which may include alternative-fueled vehicles. SEP funds will be used for the costs of retrofitting or replacing older diesel buses with alternative fueled or clean fuel diesel buses. The older “high emission” buses will be permanently retired and sold only for scrap. This project will be administered in accordance with federal, state, and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Project 1 - Environmental Benefit**

The project will provide additional air monitoring data to identify any HAPs emissions in the targeted locations. The information may help local government better inform citizens about air toxins and enable regulators to better identify emission sources.

**Project 2 - Environmental Benefit**

The combination of new efficient engines, clean fuel technologies, and high-tech after-treatment devices reduces particulate emissions (PM), hydrocarbon emissions (HC), volatile organic compounds (VOC), and nitrogen oxides (NOx) emissions. Replacement of fleet vehicles and buses with lower emission technology vehicles will have an impact on NOx and other emissions in this non-attainment area.

**C. Minimum Expenditure**

The Respondent shall spend at least the SEP Offset Amounts to complete the projects described above and comply with all other provisions of this Attachment A.

**2. Performance Schedule**

**Project 1 – Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall make the check payable to “Harris County” and mail a copy of the Agreed Order with the contribution check for Project 1 to:

Harris County PHES  
107 North Munger  
P.O. Box 6031  
Pasadena, Texas 77506

**Project 2 - Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount for Project 2 to the Third-Party Recipient. The Respondent shall make the check payable to “Houston-Galveston AERCO” and mail a copy of the Agreed Order with the contribution check to:

Houston-Galveston Area Council  
Houston-Galveston AERCO  
P.O. Box 22777  
Houston, TX 77227-2777

### **3. Reporting**

Concurrent with the payments of the SEP Offset Amounts, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the checks and transmittal letters indicating full payment of the SEP Offset Amounts to the Third-Party Recipients. The Respondent shall mail a copy of the checks and transmittal letters to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

### **4. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

### **5. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amounts and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amounts.

In the event of incomplete performance, the Respondent shall send a check to TCEQ for the remaining amount due with the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the check payable to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

### **6. Publicity**

Any public statements concerning these SEPs made by or on behalf of the Respondent must include a clear statement that the projects were performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**7. Clean Texas Program**

The Respondent shall not include these SEPs in any application made to TCEQ under the “Clean Texas” (or any successor) program. Similarly, the Respondent may not seek recognition for these contributions in any other state or federal regulatory program.

**8. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amounts identified in this Agreed Order have not been, and shall not be, included as SEPs for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	31-Aug-2009	<b>Screening</b>	9-Sep-2009	<b>EPA Due</b>	25-May-2010
	<b>PCW</b>	13-May-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Mitsubishi Caterpillar Forklift America Inc.		
<b>Reg. Ent. Ref. No.</b>	RN100219161		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38331	<b>No. of Violations</b>	4
<b>Docket No.</b>	2009-1460-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Kimberly Morales
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit</b>	Minimum	\$0	Maximum
			\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$88,000</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>	20.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$17,600</b>
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<b>Notes</b>	Penalty enhanced due to one 1660-style agreed order containing a denial of liability.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$10</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$1,116	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$6,000	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$105,590</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	<b>\$105,590</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$105,590</b>
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<b>DEFERRAL</b>	0.0%	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.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	<b>\$105,590</b>
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**Screening Date** 9-Sep-2009

**Docket No.** 2009-1460-AIR-E

**PCW**

**Respondent** Mitsubishi Caterpillar Forklift America Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 38331

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN100219161

**Media [Statute]** Air

**Enf. Coordinator** Kimberly Morales

### 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> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <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)** 20%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

Penalty enhanced due to one 1660-style agreed order containing a denial of liability.

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

Screening Date 9-Sep-2009

Docket No. 2009-1460-AIR-E

PCW

Respondent Mitsubishi Caterpillar Forklift America Inc.

Policy Revision 2 (September 2002)

Case ID No. 38331

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100219161

Media [Statute] Air

Enf. Coordinator Kimberly Morales

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 122.121 and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to have a valid Title V permit. Specifically, the Respondent failed to renew the permit which expired on October 4, 2006, and therefore was operating a forklift manufacturing facility without proper authorization during an investigation conducted on May 14, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			25%
100% of the rule requirement was not met.					

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 35 1062 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$87,500

Thirty-five monthly events are recommended based upon the October 4, 2006 permit expiration date to August 31, 2009 when a new application was submitted.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$87,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$546

Violation Final Penalty Total \$105,000

This violation Final Assessed Penalty (adjusted for limits) \$105,000

## Economic Benefit Worksheet

**Respondent** Mitsubishi Caterpillar Forklift America Inc.  
**Case ID No.** 38331  
**Reg. Ent. Reference No.** RN100219161  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				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)	\$3,000	4-Oct-2006	25-May-2010	3.64	\$546	n/a	\$546

Notes for DELAYED costs

Estimated cost to obtain authorization to operate under a Title V permit. The date required is the permit expiration date. The final date is based on the date corrective actions are expected to be completed.

### 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

\$3,000

**TOTAL**

\$546

**Screening Date** 9-Sep-2009 **Docket No.** 2009-1460-AIR-E **PCW**  
**Respondent** Mitsubishi Caterpillar Forklift America Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 38331 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN100219161  
**Media [Statute]** Air  
**Enf. Coordinator** Kimberly Morales

**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code § 101.10(b)(2) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to submit complete and accurate annual emissions inventory questionnaires. Specifically, carbon monoxide and nitrogen oxide from the powder system furnace, and volatile organic compounds ("VOCs") emissions from the storage tanks were not included in the 2006 through 2008 emissions inventories.  
**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
				x	
At least 70% of the rule requirement was met.					
<b>Adjustment</b>					\$9,900

\$100

**Violation Events**

Number of Violation Events: 3      1095 Number of violation days  
 mark only one with an x  

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$300  
 Three single events are recommended based upon the three incomplete reports.

**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	Corrective actions were completed on December 15, 2009, after the August 28, 2009 NOE and October 26, 2009 settlement offer.	
<b>Violation Subtotal</b> \$300		

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$138	Violation Final Penalty Total \$360
This violation Final Assessed Penalty (adjusted for limits) \$360	

## Economic Benefit Worksheet

**Respondent** Mitsubishi Caterpillar Forklift America Inc.  
**Case ID No.** 38331  
**Reg. Ent. Reference No.** RN100219161  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	17-Mar-2007	15-Dec-2009	2.75	\$138	n/a	\$138

**Notes for DELAYED costs**  
 Estimated cost to submit complete and accurate emissions inventory questionnaires. The date required is based on the date the first incomplete report was submitted. The final date is based on the date corrective actions were completed.

### 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**

<b>Approx. Cost of Compliance</b>	\$1,000	<b>TOTAL</b>	\$138
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**Screening Date** 9-Sep-2009 **Docket No.** 2009-1460-AIR-E **PCW**  
**Respondent** Mitsubishi Caterpillar Forklift America Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 38331 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN100219161  
**Media [Statute]** Air  
**Enf. Coordinator** Kimberly Morales

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin. Code § 122.142(b)(2) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to identify the storage, loading, and unloading of VOCs in the applicable requirements summary of Federal Operating Permit O-01432.

**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	1%

**Matrix Notes** At least 70% of the rule requirement was met.

**Adjustment** \$9,900

\$100

**Violation Events**

Number of Violation Events 1 2897 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$100

One single event is recommended based upon the incomplete requirements summary.

**Good Faith Efforts to Comply**

10.0% Reduction \$10

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

**Notes** Corrective actions were completed on August 31, 2009, after the August 28, 2009 NOE but prior to the October 26, 2009 settlement offer.

**Violation Subtotal** \$90

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$396

**Violation Final Penalty Total** \$110

**This violation Final Assessed Penalty (adjusted for limits)** \$110

## Economic Benefit Worksheet

**Respondent** Mitsubishi Caterpillar Forklift America Inc.  
**Case ID No.** 38331  
**Reg. Ent. Reference No.** RN100219161  
**Media** Air  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$1,000	4-Oct-2001	31-Aug-2009	7.91	\$396	n/a	\$396
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 ensure that all applicable units are included in the applicable requirements summary. The date required is based on the violation date. The final date is based on the date corrective actions were completed.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$396

**Screening Date** 9-Sep-2009 **Docket No.** 2009-1460-AIR-E **PCW**  
**Respondent** Mitsubishi Caterpillar Forklift America Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 38331 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN100219161  
**Media [Statute]** Air  
**Enf. Coordinator** Kimberly Morales

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 116.115(c), Tex. Health & Safety Code § 382.085(b), and Air Permit No. 22104, Special Condition No. 14  
**Violation Description** Failed to identify and mark equipment with the potential to emit air contaminants to correspond with the plot plan and the Maximum Allowable Emission Rates Table ("MAERT").  
**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

**>>Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
				x	
At least 70% of the rule requirement was met.					
<b>Adjustment</b>					\$9,900

\$100

**Violation Events**

Number of Violation Events: 1      118 Number of violation days  
*mark only one with an x*  
 daily   
 weekly   
 monthly   
 quarterly   
 semiannual   
 annual   
 single event

**Violation Base Penalty** \$100

One single event is recommended based upon the failure to mark equipment to match the plot plan and MAERT.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	
<b>Violation Subtotal</b>		

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

Estimated EB Amount \$37      Violation Final Penalty Total \$120  
**This violation Final Assessed Penalty (adjusted for limits)** \$120

## Economic Benefit Worksheet

**Respondent** Mitsubishi Caterpillar Forklift America Inc.  
**Case ID No.** 38331  
**Reg. Ent. Reference No.** RN100219161  
**Media** Air  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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)	\$1,000	14-May-2009	8-Feb-2010	0.74	\$37	n/a	\$37

Notes for DELAYED costs

Estimated cost to mark potential emission sources to correspond to the plot plan and the MAERT. The date required is the investigation date. The final date is based upon the date corrective actions are expected to be completed.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$37



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MITSUBISHI CATERPILLAR  
FORKLIFT AMERICA INC.;  
RN100219161**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-1460-AIR-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Mitsubishi Caterpillar Forklift America Inc. ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Mitsubishi owns and operates a forklift manufacturing plant located at 2011 West Sam Houston Parkway North, Houston, Harris County, Texas (the "Plant"). The Plant consists of one or more sources as defined in Tex. Health & Safety Code § 382.003(12).
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. HEALTH & SAFETY CODE ch. 382 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 one hundred five thousand five hundred ninety dollars (\$105,590.00) is assessed by the Commission in settlement of the violations alleged in Section II. Pursuant to TEX. WATER CODE § 7.067, fifty-two thousand seven hundred fifty-seven dollars (\$52,757.00) of the administrative penalty shall be conditionally offset by

Respondent's completion of a Supplemental Environmental Project ("SEP") as defined in Attachment A, incorporated herein by reference. Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement. Respondent paid fifty-two thousand eight hundred thirty-three dollars (\$52,833.00) 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 recognizes that Respondent has implemented the following corrective measures at the Plant:
  - a. Submitted a Title V permit application on August 31, 2009;
  - b. Submitted complete and accurate emissions inventories for 2006, 2007, and 2008 by December 15, 2009; and
  - c. Identified the storage, loading, and unloading of volatile organic compounds ("VOCs") in the applicable requirements summary of the Federal Operating Permit ("FOP") application submitted on August 31, 2009.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

1. During an investigation conducted on May 14, 2009, a TCEQ Houston Regional Office investigator documented that Respondent violated:

- a. 30 TEX. ADMIN. CODE § 122.121 and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to have a valid Title V permit. Specifically, Respondent failed to renew the permit which expired on October 4, 2006, and therefore was operating a forklift manufacturing facility without proper authorization;
  - b. 30 TEX. ADMIN. CODE § 101.10(b)(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to submit complete and accurate annual emissions inventory questionnaires. Specifically, carbon monoxide and nitrogen oxide from the powder system furnace, and VOC emissions from the storage tanks were not included in the 2006 through 2008 emissions inventories;
  - c. 30 TEX. ADMIN. CODE § 122.142(b)(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to identify the storage, loading, and unloading of VOCs in the applicable requirements summary of FOP No. O-01432; and
  - d. 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), and Air Permit No. 22104, Special Condition No. 14 by failing to identify and mark equipment with the potential to emit air contaminants to correspond with the plot plan and the Maximum Allowable Emission Rates Table ("MAERT").
2. Respondent received notice of the violations on or about September 2, 2009.

### **III. DENIALS**

Respondent generally denies each allegation in Section II ("Allegations").

### **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 TCEQ rules and state statutes. 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: Mitsubishi Caterpillar Forklift America Inc., Docket No. 2009-1460-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. Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067 and as set forth in Section I, Paragraph 5, above. Fifty-two thousand seven hundred fifty-seven dollars (\$52,757.00) of the assessed administrative penalty shall be offset with the condition that Respondent implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Respondent shall identify and mark equipment with the potential to emit to correspond to the plot plan MAERT;
  - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 3.a. as described in Ordering Provision No. 3.d. below;
  - c. Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the Title V permit application within 30 days after the date of such requests, or by any other deadline specified in writing; and
  - d. Within 180 days after the effective date of this Agreed Order, Respondent shall submit written certification that either a Title V authorization to operate a forklift manufacturing facility has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certifications required by Ordering Provision Nos. 3.b. and 3.d. shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that

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

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.d. to:

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

and:

Jason Harris, Air Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

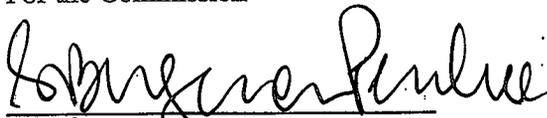
4. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
5. If Respondent fails to comply with any of the Ordering 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.
6. 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.

7. 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.
8. 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.
9. 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, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on Respondent's compliance history;
- Greater scrutiny of any permit applications submitted by Respondent;
- 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 against Respondent;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Respondent; 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

6.15.10  
\_\_\_\_\_  
Date

JAY N. GUSLER  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized representative of  
Mitsubishi Caterpillar Forklift America Inc.

DIRECTOR OF OPERATIONS  
\_\_\_\_\_  
Title

**Attachment A**  
**Docket Number: 2009-1460-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Mitsubishi Caterpillar Forklift America Inc.

**Penalty Amount:** One Hundred Five Thousand Five Hundred Ninety Dollars (\$105,590)

**Project 1 SEP Offset Amount:** Thirty-Two Thousand Seven Hundred Fifty-Seven Dollars (\$32,757)

**Project 1 Third-Party Recipient:** **Harris County Ambient and Meteorological Air Monitoring**

**Project 1 Type of SEP:** Pre-approved contribution

**Project 1 Location of SEP:** Harris County

**Project 2 SEP Offset Amount:** Twenty Thousand Dollars (\$20,000)

**Project 2 Third-Party Recipient:** **Houston-Galveston Area Emission Reduction Credit Organization (“AERCO”) Clean Cities/Clean Vehicles Program**

**Project 2 Type of SEP:** Pre-approved contribution

**Project 2 Location of SEP:** Texas Air Quality Control Region 216 Houston-Galveston

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform Supplemental Environmental Projects (“SEPs”). The SEP Offset Amounts are set forth above and such offsets are conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project 1 – Harris County Ambient Air Pollutants Monitoring

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be used by **Harris County** for the *Ambient and Meteorological Air Monitoring* as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used to install or retrofit, operate, maintain, and potentially expand air monitoring stations in Harris County to continuously monitor ambient air for total non-methane hydrocarbons and hazardous air pollutants (HAPs). Specifically, SEP Funds will be used to purchase equipment (such as automated canister samplers), hardware, software, and licenses to enable the monitoring. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

Project 2 –Houston-Galveston AERCO Clean Cities/ Clean Vehicles Program

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Houston-Galveston Area Emission Reduction Credit Organization (“AERCO”)**

for the *Clean Cities/Clean Vehicles Program* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, SEP funds will be used to provide reimbursement to school districts, area transit agencies, or local governments in the Houston-Galveston non-attainment area to retrofit or replace older school buses with current model year buses or cleaner technology and for the incremental cost of replacing local government fleet vehicles with newer lower-emission vehicles, which may include alternative-fueled vehicles. SEP funds will be used for the costs of retrofitting or replacing older diesel buses with alternative fueled or clean fuel diesel buses. The older “high emission” buses will be permanently retired and sold only for scrap. This project will be administered in accordance with federal, state, and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Project 1 - Environmental Benefit**

The project will provide additional air monitoring data to identify any HAPs emissions in the targeted locations. The information may help local government better inform citizens about air toxins and enable regulators to better identify emission sources.

**Project 2 - Environmental Benefit**

The combination of new efficient engines, clean fuel technologies, and high-tech after-treatment devices reduces particulate emissions (PM), hydrocarbon emissions (HC), volatile organic compounds (VOC), and nitrogen oxides (NOx) emissions. Replacement of fleet vehicles and buses with lower emission technology vehicles will have an impact on NOx and other emissions in this non-attainment area.

**C. Minimum Expenditure**

The Respondent shall spend at least the SEP Offset Amounts to complete the projects described above and comply with all other provisions of this Attachment A.

**2. Performance Schedule**

**Project 1 – Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall make the check payable to “Harris County” and mail a copy of the Agreed Order with the contribution check for Project 1 to:

Harris County PHES  
107 North Munger  
P.O. Box 6031  
Pasadena, Texas 77506

**Project 2 - Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount for Project 2 to the Third-Party Recipient. The Respondent shall make the check payable to “Houston-Galveston AERCO” and mail a copy of the Agreed Order with the contribution check to:

Houston-Galveston Area Council  
Houston-Galveston AERCO  
P.O. Box 22777  
Houston, TX 77227-2777

### **3. Reporting**

Concurrent with the payments of the SEP Offset Amounts, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the checks and transmittal letters indicating full payment of the SEP Offset Amounts to the Third-Party Recipients. The Respondent shall mail a copy of the checks and transmittal letters to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

### **4. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

### **5. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amounts and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amounts.

In the event of incomplete performance, the Respondent shall send a check to TCEQ for the remaining amount due with the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the check payable to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

### **6. Publicity**

Any public statements concerning these SEPs made by or on behalf of the Respondent must include a clear statement that the projects were performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**7. Clean Texas Program**

The Respondent shall not include these SEPs in any application made to TCEQ under the “Clean Texas” (or any successor) program. Similarly, the Respondent may not seek recognition for these contributions in any other state or federal regulatory program.

**8. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amounts identified in this Agreed Order have not been, and shall not be, included as SEPs for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.