**Executive Summary – Enforcement Matter – Case No. 41532**
**Hidalgo County**
**RN105335459**
**Docket No. 2011-0622-AIR-E**

**Order Type:**
1660 Agreed Order
**Findings Order Justification:**
N/A
**Media:**
AIR
**Small Business:**
No
**Location(s) Where Violation(s) Occurred:**
Hidalgo County Precinct 1, located on Mile 1.5 West Road, 0.25 mile north of the Mile 11 North Road and Mile 1.5 West Road intersection, near Mercedes, Hidalgo County
**Type of Operation:**
Air curtain incinerator
**Other Significant Matters:**
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
**Texas Register Publication Date:** August 12, 2011
**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** $3,000
**Amount Deferred for Expedited Settlement:** $600
**Amount Deferred for Financial Inability to Pay:** $0
**Total Paid to General Revenue:** $2,400
**Total Due to General Revenue:** $0
Payment Plan: N/A
**SEP Conditional Offset:** $0
Name of SEP: N/A
**Compliance History Classifications:**
Person/CN - Average
Site/RN - Average
**Major Source:** No
**Statutory Limit Adjustment:** N/A
**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41532**
**Hidalgo County**
**RN105335459**
**Docket No. 2011-0622-AIR-E**

## *Investigation Information*

**Complaint Date(s):** N/A
**Complaint Information**: N/A
**Date(s) of Investigation:** February 8, 2011
**Date(s) of NOE(s):** March 28, 2011

## *Violation Information*

1. Failed to certify compliance with the terms and conditions of the permit for each 12-month period following permit issuance. Specifically, a Permit Compliance Certification for the period March 26, 2009 to March 25, 2010 was due by April 25, 2010 and it was not submitted [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(1), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(3)(D)(i) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

2. Failed to clearly and permanently mark the air curtain incinerator with the regulated entity or account identification number on the fan manifold or aboveground unit [30 TEX. ADMIN. CODE §§ 122.143(4) and 106.496(h)(4)(D), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(9)(D) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

3. Failed to submit a deviation report for each six-month period after permit issuance in which a deviation occurred. Specifically, the failure to submit the permit compliance certification due by April 25, 2010 should have been included in a deviation report during the next deviation reporting period of March 26, 2010 through September 25, 2010, which was due on October 25, 2010 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(3)(C)(ii)(b) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

## *Corrective Actions/Technical Requirements*

### Corrective Action(s) Completed:

N/A

### Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

i. Implement a plan to ensure the timely and complete submittal of annual permit compliance certifications;

ii. Clearly and permanently mark the air curtain incinerator with the regulated entity or account identification number on the fan manifold or aboveground unit; and

iii. Implement improvements to training procedures and the recordkeeping system to ensure that all deviations are completely and accurately reported.

b. Within 45 days, submit written certification demonstrating compliance.

## *Litigation Information*

**Date Petition(s) Filed:** N/A
**Date Answer(s) Filed:** N/A
**SOAH Referral Date:** N/A
**Hearing Date(s):** N/A
**Settlement Date:** N/A

## *Contact Information*

**TCEQ Attorney:** N/A
**TCEQ Enforcement Coordinator:** Allison Fischer, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2574; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.
**TCEQ SEP Coordinator**: N/A
**Respondent:** Joel Quintanilla, County Commissioner, Precinct 1, Hidalgo County, 1902 Joe Stephens Avenue, Weslaco, Texas 78596
**Respondent's Attorney:** N/A

# Penalty Calculation Worksheet (PCW)

TCEQ

*Policy Revision 2 (September 2002)* — *PCW Revision October 30, 2008*

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 4-Apr-2011 | | | | |
| PCW | 28-Apr-2011 | Screening | 27-Apr-2011 | EPA Due | 19-Dec-2011 |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | Hidalgo County | | |
| Reg. Ent. Ref. No. | RN105335459 | | |
| Facility/Site Region | 15-Harlingen | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 41532 | No. of Violations | 3 |
| Docket No. | 2011-0622-AIR-E | Order Type | 1660 |
| Media Program(s) | Air | Government/Non-Profit | Yes |
| Multi-Media | | Enf. Coordinator | Allison Fischer |
| | | EC's Team | Enforcement Team 4 |

Admin. Penalty $ Limit Minimum: $0 Maximum: $10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** — *Subtotal 1* **$3,000**

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

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

**Compliance History** — **0.0%** Enhancement — *Subtotals 2, 3, & 7* **$0**

Notes: No adjustment for compliance history.

**Culpability** No — **0.0%** Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** — *Subtotal 5* **$0**

**Economic Benefit** — **0.0%** Enhancement* — *Subtotal 6* **$0**

Total EB Amounts: $282
Approx. Cost of Compliance: $3,500
**Capped at the Total EB $ Amount*

**SUM OF SUBTOTALS 1-7** — *Final Subtotal* **$3,000**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount* **$3,000**

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty* **$3,000**

**DEFERRAL** — **20.0%** Reduction — *Adjustment* **-$600**

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **$2,400**

**Screening Date** 27-Apr-2011 **Docket No.** 2011-0622-AIR-E **PCW**

**Respondent** Hidalgo County *Policy Revision 2 (September 2002)*

**Case ID No.** 41532 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105335459

**Media [Statute]** Air

**Enf. Coordinator** Allison Fischer

# Compliance History Worksheet

## >> Compliance History *Site* Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|---|---|---|---|
| NOVs | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria* ) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria* ) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria* ) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (*number of counts* ) | 0 | 0% |
| Emissions | Chronic excessive emissions events (*number of events* ) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)* | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed* ) | 0 | 0% |

| | | Please Enter Yes or No | |
|---|---|---|---|
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

***Adjustment Percentage (Subtotal 2)*** 0%

## >> 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**

No adjustment for compliance history.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** 0%

**Screening Date** 27-Apr-2011 **Docket No.** 2011-0622-AIR-E **PCW**

**Respondent** Hidalgo County *Policy Revision 2 (September 2002)*

**Case ID No.** 41532 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105335459

**Media [Statute]** Air

**Enf. Coordinator** Allison Fischer

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code §§ 122.143(4) and 122.146(1), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(3)(D)(i) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to certify compliance with the terms and conditions of the permit for each 12-month period following permit issuance. Specifically, a Permit Compliance Certification for the period March 26, 2009 to March 25, 2010 was due by April 25, 2010 and it was not submitted.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

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

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 1 — 367 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

**Violation Base Penalty** $1,000

One single event is recommended for the one delinquent certification.

## Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

**Violation Subtotal** $1,000

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $114

## Statutory Limit Test

**Violation Final Penalty Total** $1,000

**This violation Final Assessed Penalty (adjusted for limits)** $1,000

# Economic Benefit Worksheet

**Respondent** Hidalgo County
**Case ID No.** 41532
**Reg. Ent. Reference No.** RN105335459
**Media** Air
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | | | | 0.00 | $0 | $0 | $0 |
| Buildings | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Engineering/construction | | | | 0.00 | $0 | $0 | $0 |
| Land | | | | 0.00 | $0 | n/a | $0 |
| Record Keeping System | $1,500 | 25-Apr-2010 | 1-Nov-2011 | 1.52 | $114 | n/a | $114 |
| 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 costs to implement procedures designed to ensure the submittal of timely and accurate permit compliance certifications. The date required is the date the first permit compliance certification should have been submitted. 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** $1,500

**TOTAL** $114

**Screening Date** 27-Apr-2011 **Docket No.** 2011-0622-AIR-E **PCW**

**Respondent** Hidalgo County *Policy Revision 2 (September 2002)*

**Case ID No.** 41532 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105335459

**Media [Statute]** Air

**Enf. Coordinator** Allison Fischer

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code §§ 122.143(4) and 106.496(h)(4)(D), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(9)(D) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to clearly and permanently mark the air curtain incinerator with the regulated entity or account identification number on the fan manifold or aboveground unit.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

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

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 1 762 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

**Violation Base Penalty** $1,000

One single event is recommended for the one unlabeled incinerator.

## Good Faith Efforts to Comply

0.0% Reduction $0

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

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

**Violation Subtotal** $1,000

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $91

## Statutory Limit Test

**Violation Final Penalty Total** $1,000

**This violation Final Assessed Penalty (adjusted for limits)** $1,000

# Economic Benefit Worksheet

**Respondent** Hidalgo County
**Case ID No.** 41532
**Reg. Ent. Reference No.** RN105335459
**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) | $500 | 26-Mar-2009 | 1-Nov-2011 | 2.60 | $4 | $87 | $91 |
| 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**: Estimated cost to label the emissions source with an identification number. The date required is the Permit By Rule/GOP issuance date 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** $500

**TOTAL** $91

**Screening Date** 27-Apr-2011 **Docket No.** 2011-0622-AIR-E **PCW**

**Respondent** Hidalgo County *Policy Revision 2 (September 2002)*

**Case ID No.** 41532 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105335459

**Media [Statute]** Air

**Enf. Coordinator** Allison Fischer

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(B), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(3)(C)(ii)(b) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to submit a deviation report for each six-month period after permit issuance in which a deviation occurred. Specifically, the failure to submit the permit compliance certification due by April 25, 2010 should have been included in a deviation report during the next deviation reporting period of March 26, 2010 through September 25, 2010, which was due on October 25, 2010.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

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

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 1 | 184 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

**Violation Base Penalty** $1,000

One single event is recommended for the one delinquent report.

## Good Faith Efforts to Comply

0.0% Reduction $0

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

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

**Violation Subtotal** $1,000

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $76

## Statutory Limit Test

**Violation Final Penalty Total** $1,000

**This violation Final Assessed Penalty (adjusted for limits)** $1,000

# Economic Benefit Worksheet

**Respondent** Hidalgo County
**Case ID No.** 41532
**Reg. Ent. Reference No.** RN105335459
**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 | $1,500 | 25-Oct-2010 | 1-Nov-2011 | 1.02 | $76 | n/a | $76 |
| 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 costs to implement procedures designed to ensure timely and accurate submittal of semi-annual deviation reports. The date required is the date the deviation report should have been submitted. The final date is the expected date of compliance.

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

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

**Notes for AVOIDED costs**:

**Approx. Cost of Compliance** $1,500

**TOTAL** $76

# Compliance History

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN600753990 | Hidalgo County | Classification: AVERAGE | Rating: 2.00 |
| Regulated Entity: | RN105335459 | HIDALGO COUNTY PRECINCT 1 | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01 |

| ID Number(s): | | | |
|---|---|---|---|
| | AIR OPERATING PERMITS | PERMIT | 3278 |
| | AIR NEW SOURCE PERMITS | REGISTRATION | 82819 |
| | AIR NEW SOURCE PERMITS | AFS NUM | 4821500688 |
| | AIR EMISSIONS INVENTORY | ACCOUNT NUMBER | HNA010J |

Location: ON MILE 1.5 WEST ROAD, 0.25 MILE NORTH OF THE MILE 11 NORTH ROAD AND MILE 1.5 WEST ROAD INTERSECTION, NEAR MERCEDES, HIDALGO COUNTY

TCEQ Region: REGION 15 - HARLINGEN

Date Compliance History Prepared: April 08, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 08, 2006 to April 08, 2011

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

Name: Allison Fischer Phone: (512) 239 - 2574

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator?
   N/A
4. If Yes, who was/were the prior owner(s)/operator(s)?
   N/A
5. When did the change(s) in owner or operator occur?
   N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, 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 03/28/2011 (886417)

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

F. Environmental audits.
   N/A

G. Type of environmental management systems (EMSs).
   N/A

H. Voluntary on-site compliance assessment dates.
   N/A

I. Participation in a voluntary pollution reduction program.
   N/A

J. Early compliance.
   N/A

Sites Outside of Texas
   N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

| | | |
|---|---|---|
| **IN THE MATTER OF AN** | **§** | **BEFORE THE** |
| **ENFORCEMENT ACTION** | **§** | |
| **CONCERNING** | **§** | **TEXAS COMMISSION ON** |
| **HIDALGO COUNTY** | **§** | |
| **RN105335459** | **§** | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2011-0622-AIR-E**

## I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Hidalgo County ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an air curtain incinerator located on Mile 1.5 West Road, 0.25 mile north of the Mile 11 North Road and Mile 1.5 West Road intersection near Mercedes, Hidalgo County, Texas (the "Site").

2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 2, 2011.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Dollars ($3,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The Respondent has paid Two Thousand Four Hundred Dollars ($2,400) of the administrative penalty and Six Hundred Dollars ($600) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

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

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to certify compliance with the terms and conditions of the permit for each 12-month period following permit issuance, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(1), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(3)(D)(i) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 8, 2011. Specifically, a Permit Compliance Certification for the period March 26, 2009 to March 25, 2010 was due by April 25, 2010 and it was not submitted.

2. Failed to clearly and permanently mark the air curtain incinerator with the regulated entity or account identification number on the fan manifold or aboveground unit, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 106.496(h)(4)(D), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(9)(D) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 8, 2011.

3. Failed to submit a deviation report for each six-month period after permit issuance in which a deviation occurred, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and

122.145(2)(B), General Operating Permit No. O3278, Air Curtain Incinerator General Operating Permit No. 518, Terms and Conditions (b)(3)(C)(ii)(b) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 8, 2011. Specifically, the failure to submit the permit compliance certification due by April 25, 2010 should have been included in a deviation report during the next deviation reporting period of March 26, 2010 through September 25, 2010, which was due on October 25, 2010.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Hidalgo County, Docket No. 2011-0622-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days of the effective date of this Agreed Order:

      i. Implement a plan to ensure the timely and complete submittal of annual permit compliance certifications;

      ii. Clearly and permanently mark the air curtain incinerator with the regulated entity or account identification number on the fan manifold or aboveground unit; and

      iii. Implement improvements to training procedures and the recordkeeping system to ensure that all deviations are completely and accurately reported.

   b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance

with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Air Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1)

enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 9/20/11
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ 9/6/2011
Signature Date

Joel Quintanilla County Commissioner, Pct. 1
Name (Printed or typed) Title
Authorized Representative of
Hidalgo County

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