

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1180-AIR-E **TCEQ ID:** RN101921138 **CASE NO.:** 40070  
**RESPONDENT NAME:** University of Texas Medical Branch at Galveston

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> UTMB Galveston, 301 University Boulevard, Galveston, Galveston County</p> <p><b>TYPE OF OPERATION:</b> Medical waste incinerator</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 20, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Todd Huddleson, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2541; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Michael R. Shriner, Vice President of Business Operations and Facilities, University of Texas Medical Branch at Galveston, 301 University Boulevard, Galveston, Texas 77555  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 3, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 25, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>Failed to maintain the maximum limit for nitrogen oxide ("NOx") based on an hourly average when firing natural gas for Boiler No. 1 (Emission Point Number ("EPN") BOILER1) and Boiler No. 2 (EPN BOILER2). Specifically, between May 1, 2008 and September 12, 2008, there were 26 non-consecutive days the Respondent exceeded the maximum NOx limit of 0.036 pounds/million british thermal units ("lbs/MMBtu") for BOILER1 with a range from 0.054 lbs/MMBtu to 0.111 lbs/MMBtu and the NOx limit of 0.020 lbs/MMBtu for BOILER2 with a range of 0.021 lbs/MMBtu to 0.111 lbs/MMBtu based on an hourly average when firing natural gas [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), New Source Review Permit No. 56653, Special Conditions 1 and 4, and Federal Operating Permit No. O-1531, General Terms and Conditions and Special Terms and Conditions 1(A) and 7].</p>	<p><b>Total Assessed:</b> \$5,000</p> <p><b>Total Deferred:</b> \$1,000  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$4,000</p> <p><b>Compliance History Classification:</b>                      Person/CN – Average                      Site/RN – Average</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, by January 1, 2009, the Respondent repaired the peristaltic pumps to ensure that condensation is removed to prevent accumulation in the pumps which causes an increase in NOx measurements.</p>

Additional ID No(s): GBoo81Q



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	28-Jun-2010	<b>PCW</b>	11-Oct-2010	<b>Screening</b>	12-Jul-2010	<b>EPA Due</b>	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	University of Texas Medical Branch at Galveston
<b>Reg. Ent. Ref. No.</b>	RN101921138
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40070	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1180-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Kirk Schoppe
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

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

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

**Notes** Enhancement for two same/similar NOV's and one order with denial; Reduction for participation in a voluntary pollution reduction program.

**Culpability**   Enhancement **Subtotal 4**

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes** Deferral offered for expedited settlement.

**PAYABLE PENALTY**

Screening Date 12-Jul-2010

Docket No. 2010-1180-AIR-E

PCW

Respondent University of Texas Medical Branch at Galveston

Policy Revision 2 (September 2002)

Case ID No. 40070

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101921138

Media [Statute] Air

Enf. Coordinator Klrk Schoppe

### 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)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an Intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	Yes	-5%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

#### >> 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

Enhancement for two same/similar NOVs and one order with denial. Reduction for participation in a voluntary pollution reduction program.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 12-Jul-2010

Docket No. 2010-1180-ATR-E

PCW

Respondent University of Texas Medical Branch at Galveston

Policy Revision 2 (September 2002)

Case ID No. 40070

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101921138

Media [Statute] Air

Enf. Coordinator Kirk Schoppe

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 116.115(c) and 122.143(4), Tex. Health & Safety Code § 382.085(b), New Source Review Permit No. 56653, Special Conditions 1 and 4, and Federal Operating Permit No. O-1531, General Terms and Conditions and Special Terms and Conditions 1(A) and 7

Violation Description

Failed to maintain the maximum limit for nitrogen oxide ("NOx") based on an hourly average when firing natural gas for Boiler No. 1 (Emission Point Number ("EPN") BOILER1) and Boiler No. 2 (EPN BOILER2). Specifically, between May 1, 2008 and September 12, 2008, there were 26 non-consecutive days the Respondent exceeded the maximum NOx limit of 0.036 pounds/million british thermal units ("lbs/MMBtu") for BOILER1 with a range from 0.054 lbs/MMBtu to 0.111 lbs/MMBtu and the NOx limit of 0.020 lbs/MMBtu for BOILER2 with a range of 0.021 lbs/MMBtu to 0.111 lbs/MMBtu based on an hourly average when firing natural gas.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 26

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

Violation Base Penalty \$5,000

Two quarterly events are recommended based on the exceedances between May 1, 2008 to September 12, 2008 for BOILER1 and BOILER2.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

	Before NOV	NOV to ED/PRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes The Respondent returned to compliance by January 1, 2009 and the NOE is dated June 25, 2010.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$59

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

# Economic Benefit Worksheet

**Respondent:** University of Texas Medical Branch at Galveston

**Case ID No.:** 40070

**Reg. Ent. Reference No.:** RN101921138

**Media:** Air

**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$250	1-May-2008	1-Jan-2009	0.67	\$8	n/a	\$8
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	1-May-2008	1-Jan-2009	0.67	\$50	n/a	\$50

Notes for DELAYED costs

Estimated cost for additional oversight and management practices to ensure that the NOx limit is maintained at BOILER1 and BOILER2. The Date Required is based on the first date of noncompliance and the Final Date is the date of compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$1,750

**TOTAL**

\$59

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601246887 University of Texas Medical Branch at Galveston Classification: AVERAGE Rating: 3.98

Regulated Entity: RN101921138 UTMB GALVESTON Classification: AVERAGE Site Rating: 5.94

ID Number(s):

AIR OPERATING PERMITS	ACCOUNT NUMBER	GB0081Q
AIR OPERATING PERMITS	PERMIT	1531
MUNICIPAL SOLID WASTE PROCESSING	PERMIT	2232A
PETROLEUM STORAGE TANK	REGISTRATION	30977
REGISTRATION		
AIR NEW SOURCE PERMITS	PERMIT	18655
AIR NEW SOURCE PERMITS	REGISTRATION	49635
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	GB0081Q
AIR NEW SOURCE PERMITS	PERMIT	56653
AIR NEW SOURCE PERMITS	AFS NUM	4816700078
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	71034
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD000821264
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	71034
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	GB0081Q
MEDICAL WASTE	REGISTRATION	50110

Location: 301 UNIVERSITY BLVD, GALVESTON, TX, 77555

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 30, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 30, 2005 to June 30, 2010

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

Name: Kirk Schoppe Phone: 239 - 0489

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

### Components (Multimedia) for the Site :

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

Effective Date: 09/21/2007 ADMINORDER 2005-1973-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 113, SubChapter D 113.2075(a)(2)(B)  
30 TAC Chapter 116, SubChapter B 116.115(c)

Rqmt Prov: Permit No. 18655, SC No. 4 PA

Description: Failed to operate within the permitted limits for opacity and emission limits for particulate matter

Classification: Moderate

Citation: 30 TAC Chapter 113, SubChapter D 113.2075(a)(2)(B)  
30 TAC Chapter 116, SubChapter B 116.115(c)

Rqmt Prov: Permit No. 18655, SC No. 11C PA

Description: Failed to perform annual performance stack test no more than 12 months following the previous performance test

- 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 11/23/2005 (433452)  
2 07/17/2006 (460484)  
3 07/17/2006 (480963)  
4 12/07/2006 (516018)  
5 07/05/2007 (558704)  
6 08/16/2007 (572313)  
7 10/16/2007 (597895)  
8 12/20/2007 (599216)  
9 12/20/2007 (599224)  
10 12/20/2007 (599225)  
11 12/20/2007 (599227)  
12 12/20/2007 (599230)  
13 01/04/2008 (600254)  
14 04/17/2008 (637854)  
15 03/18/2009 (726117)  
16 06/25/2010 (801371)

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

Date: 03/18/2009 (726117) CN601246887  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
SC13B PERMIT  
Special Terms and Conditions 1(A) OP  
Special Terms and Conditions 7 OP  
Description: Failure to perform daily zero and span on the CEMS.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 113, SubChapter D 113.2075(a)(3)(B)  
30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
SC12 PERMIT  
Special Terms and Conditions 1(A) OP  
Special Terms and Conditions 7 OP  
Description: Failure to operate within the established incinerator operating parameters for the flue gas temperature, scrubber pH, and secondary chamber temperature.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 117, SubChapter B 117.310(f)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
Special Terms and Conditions 1(A) OP  
Special Terms and Conditions 7 OP  
Description: Failure to comply with operating restrictions for the emergency engines.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
SC1 PERMIT  
SC4 PERMIT  
Special Terms and Conditions 1(A) OP  
Special Terms and Conditions 7 OP  
Description: Failure to comply with the established NOx permit limit of 0.036 and 0.020 lb/MMBtu hourly average for BOILER1 and BOILER2, respectively.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)  
30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
SC1 PERMIT  
SC4 PERMIT  
Special Terms and Conditions 1(A) OP  
Special Terms and Conditions 7 OP

Description: Failure to comply with the emission limits in the MAERT.

Date: 06/25/2010 (801371)

CN601246887

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
Permit 1531, ST&C 1(A) OP  
Permit 1531, ST&C 13(B) OP  
Permit 1531, ST&C 7 OP

Description: Failure to comply with the failed to perform daily zero and span on the CEMS.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
Permit 1531, ST&C 1(A) OP  
Permit 1531, ST&C 7 OP  
Permit 18655, SC12 PERMIT

Description: Failure to operate within the established incinerator operating parameters for the pressure drop across the wet scrubber, scrubber pH, and secondary chamber temperature.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 117, SubChapter B 117.310(f)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
Permit 1531, ST&C 1(A) OP

Description: Failure to comply with the operating restrictions for the emergency engines

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.

Type

Tier

Certification Date

07/01/2007

NATIONAL ENVIRONMENTAL  
PERFORMANCE TRACK

J. Early compliance.

N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
UNIVERSITY OF TEXAS  
MEDICAL BRANCH AT  
GALVESTON  
RN101921138**

§ **BEFORE THE**  
§  
§  
§ **TEXAS COMMISSION ON**  
§  
§  
§ **ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2010-1180-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 the University of Texas Medical Branch at Galveston ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a medical waste incinerator at 301 University Boulevard in Galveston, Galveston County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 30, 2010.
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 Five Thousand Dollars (\$5,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Dollars (\$4,000) of the administrative penalty and One Thousand Dollars (\$1,000) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that, by January 1, 2009, the Respondent repaired the peristaltic pumps to ensure that condensation is removed to prevent accumulation in the pumps which causes an increase in nitrogen oxide ("NOx") measurements.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to maintain the maximum limit for NOx based on an hourly average when firing natural gas for Boiler No. 1 (Emission Point Number ("EPN") BOILER1) and Boiler No. 2 (EPN BOILER2), in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), New Source Review Permit No. 56653, Special Conditions 1 and 4, and Federal Operating Permit No. O-1531, General Terms and Conditions and Special Terms and Conditions 1(A) and 7, as documented during an investigation conducted on May 3, 2010. Specifically, between May 1, 2008 and September 12, 2008, there were 26 non-consecutive days the Respondent exceeded the maximum NOx limit of 0.036 pounds/million british thermal units ("lbs/MMBtu") for BOILER1 with a range from 0.054 lbs/MMBtu to 0.111 lbs/MMBtu and the NOx limit of 0.020 lbs/MMBtu for BOILER2 with a range of 0.021 lbs/MMBtu to 0.111 lbs/MMBtu based on an hourly average when firing natural gas.

### III. DENIALS

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

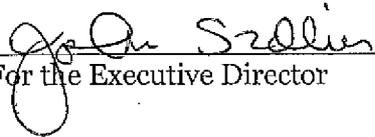
### IV. ORDERING PROVISIONS

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: University of Texas Medical Branch at Galveston, Docket No. 2010-1180-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. 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.
4. 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date 11/22/2010

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

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

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

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date OCT 21, 2010

MICHAEL R. SWINER  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
University of Texas Medical Branch at Galveston

V.P. BUSINESS OPERATIONS  
\_\_\_\_\_  
Title FACILITIES,  
U.T.M.B.

**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.