EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0601-AIR-E **TCEQ ID:** RN102771177 **CASE NO.:** 37528

RESPONDENT NAME: Tyson Poultry, Inc.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Tyson Tenaha Feedmill, 7665 United States Highway 96 North, Tenaha, Shelby County

TYPE OF OPERATION: Feed mill

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: A complaint was received on February 13, 2009, alleging improper operation of the air filtration system, causing excessive dust and unauthorized water discharges from the feed mill. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on September 14, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Audra Benoit, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8799; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387

Respondent: Mr. Tommy Robertson, Live Production Manager, Tyson Poultry, Inc., 7665 United States Highway 96 North, Tenaha, Texas 75974

Mr. Mike Smith, Complex Manager, Tyson Poultry, Inc., 7665 United States Highway 96 North, Tenaha, Texas 75974

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** February 13, 2009 **Date of Investigation Relating to this Case:** February 25, 2009 **Date of NOV/NOE Relating to this Case:** April 23, 2009 (NOE) **Background Facts:** This was a complaint investigation. **AIR** 1) Failure to obtain authorization for all emission sources. Specifically, the Soybean and Blended Product Baghouses were not listed as emission points on Air Permit No. 3797 [30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)]. 2) Failure to maintain records necessary to determine compliance with operating conditions of the permit. Specifically, the records were not being maintained for scheduled cleaning and maintenance of the abatement equipment from January 1, 2006 through September 30, 2008 [30 TEX. ADMIN. CODE § 116.115(c), TEX. HEATH & SAFETY CODE § 382.085(b), and Air Permit No. 3797, Special Condition 7B]. 3) Failure to operate air pollution emissions capture and abatement equipment properly during normal operations. Specifically, the Plant continued to operate under normal conditions while the Lime, Salt, Phosphate, and Hammermill Baghouses were not in operation from October 2008 through January 2009, resulting in the release of approximately 81,420 pounds of particulate matter [30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b), and Air Permit No. 3797, General Condition 9 and Special Condition 1].	**Total Assessed:** $15,753 **Total Deferred:** $3,150 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $12,603 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent implemented a record keeping system beginning in October 2008, for the scheduled cleaning and maintenance of the abatement equipment. **Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, ensure that all air pollution emissions capture and abatement equipment is operated properly during normal operations; b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a.; c. Within 180 days after the effective date of this Agreed Order, obtain an amendment to Air Permit No. 3797 authorizing emissions from the Soybean and Blended Product Baghouses or cease operation of those baghouses; d. Within 195 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision c.; and d. The certifications required by Ordering Provisions b. and c. shall include detailed supporting documentation including photographs, receipts, and/or other records.

Additional ID No(s).: SI0024N

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	27-Apr-2009				
PCW	8-Nov-2010	Screening	28-Apr-2009	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Tyson Poultry, Inc.		
Reg. Ent. Ref. No.	RN102771177		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	37528	No. of Violations	3
Docket No.	2009-0601-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Audra Benoit
		EC's Team	Enforcement Team 5

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

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $14,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 4.0% Enhancement — *Subtotals 2, 3, & 7* $560

Notes: Penalty enhancement due to two unrelated NOVs.

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* $250

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

Total EB Amounts $2,016
Approx. Cost of Compliance $9,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $14,310

OTHER FACTORS AS JUSTICE MAY REQUIRE — 10.1% — *Adjustment* $1,443

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to recover avoided costs associated with Violation No. 2

Final Penalty Amount $15,753

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $15,753

DEFERRAL — 20.0% Reduction — *Adjustment* -$3,150

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 $12,603

Screening Date 28-Apr-2009 **Docket No.** 2009-0601-AIR-E **PCW**

Respondent Tyson Poultry, Inc.

Policy Revision 2 (September 2002)

Case ID No. 37528

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102771177

Media [Statute] Air

Enf. Coordinator Audra Benoit

Compliance History Worksheet

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

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	2	4%
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) 4%

>> 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 enhancement due to two unrelated NOVs.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 28-Apr-2009 **Docket No.** 2009-0601-AIR-E **PCW**

Respondent Tyson Poultry, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 37528 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102771177

Media [Statute] Air

Enf. Coordinator Audra Benoit

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.110(a)(1) and Tex. Health & Safety Code §§ 382.0518(a) and 382.085(b)

Violation Description Failed to obtain authorization for all emission sources. Specifically, the Soybean and Blended Product Baghouses were not listed as emission points on Air Permit No. 3797.

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: 3 — 62 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three monthly events are recommended from the February 25, 2009 investigation to the April 28, 2009 screening.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $3,000

Economic Benefit (EB) for this violation

Estimated EB Amount $101

Statutory Limit Test

Violation Final Penalty Total $3,435

This violation Final Assessed Penalty (adjusted for limits) $3,435

Economic Benefit Worksheet

Respondent Tyson Poultry, Inc.
Case ID No. 37528
Reg. Ent. Reference No. RN102771177
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							
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	$3,000	25-Feb-2009	28-Oct-2009	0.67	$101	n/a	$101
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to obtain authorization for the Soybean and Blended Product Baghouses. The date required is the investigation date. 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: $3,000

TOTAL: $101

Screening Date 28-Apr-2009 **Docket No.** 2009-0601-AIR-E **PCW**

Respondent Tyson Poultry, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 37528 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102771177

Media [Statute] Air

Enf. Coordinator Audra Benoit

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Tex. Heath & Safety Code § 382.085(b), and Air Permit No. 3797, Special Condition 7B

Violation Description Failed to maintain records necessary to determine compliance with operating conditions of the permit. Specifically, the records were not being maintained for scheduled cleaning and maintenance of the abatement equipment from January 1, 2006 through September 30, 2008.

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 | 1003 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 based on the records not being maintained.

Good Faith Efforts to Comply

25.0% Reduction $250

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

Notes: Compliance was achieved October 1, 2008.

Violation Subtotal $750

Economic Benefit (EB) for this violation

Estimated EB Amount $1,539

Statutory Limit Test

Violation Final Penalty Total $870

This violation Final Assessed Penalty (adjusted for limits) $870

Economic Benefit Worksheet

Respondent Tyson Poultry, Inc.
Case ID No. 37528
Reg. Ent. Reference No. RN102771177
Media Air
Violation No. 2

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)	$500	1-Jan-2006	1-Oct-2008	2.75	$5	$92	$96
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 implement a record keeping system to ensure cleaning and maintenance of the abatement equipment. The date required is the first date of non-compliance. The final date is the date that corrective actions were in place.

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

Disposal				0.00	$0	$0	$0
Personnel	$500	1-Jan-2006	30-Sep-2008	2.75	$69	$1,374	$1,443
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: Estimated cost of personnel expense to maintain records for the time period that they were not kept.

Approx. Cost of Compliance $1,000

TOTAL $1,539

Screening Date 28-Apr-2009 **Docket No.** 2009-0601-AIR-E **PCW**

Respondent Tyson Poultry, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 37528 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102771177

Media [Statute] Air

Enf. Coordinator Audra Benoit

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Tex. Health & Safety Code § 382.085(b) and Air Permit No. 3797, General Condition 9 and SC 1

Violation Description Failed to operate air pollution emissions capture and abatement equipment properly during normal operations. Specifically, the Plant continued to operate under normal conditions while the Lime, Salt, Phosphate and Hammermill Baghouses were not in operation from October 2008 through January 2009, resulting in the release of approximately 81,420 pounds of particulate matter.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 4 — 123 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $10,000

Four monthly events are recommended, one for each baghouse.

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 crteria for this violation.

Violation Subtotal $10,000

Economic Benefit (EB) for this violation

Estimated EB Amount $376

Statutory Limit Test

Violation Final Penalty Total $11,449

This violation Final Assessed Penalty (adjusted for limits) $11,449

Economic Benefit Worksheet

Respondent Tyson Poultry, Inc.
Case ID No. 37528
Reg. Ent. Reference No. RN102771177
Media Air
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)	$5,000	1-Oct-2008	28-Oct-2009	1.07	$18	$358	$376
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 ensure that emissions capture and abatement equipment is operated properly. The date required is the first date of non-compliance. 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 $5,000

TOTAL $376

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602410425	Tyson Poultry, Inc.	Classification: AVERAGE	Rating: 1.75
Regulated Entity:	RN102771177	TYSON TENAHA FEEDMILL	Classification: AVERAGE	Site Rating: 3.50

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	3797
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	SI0024N
	AIR NEW SOURCE PERMITS	AFS NUM	4841900003
	AIR NEW SOURCE PERMITS	REGISTRATION	71421
	AIR NEW SOURCE PERMITS	REGISTRATION	72543
	AIR NEW SOURCE PERMITS	REGISTRATION	74190
	AIR NEW SOURCE PERMITS	REGISTRATION	83187
	STORMWATER	PERMIT	TXR05L352

Location: 7665 US HIGHWAY 96 N, TENAHA, TX, 75974

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: April 27, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 27, 2004 to April 27, 2009

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

Name: Audra Benoit Phone: (409) 899-8799

Site Compliance History Components

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

6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 07/07/2008 (682978)

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

Date: 05/29/2008 (670964) CN602410425

Self Report? NO Classification: Minor

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

TXR05L352 Part III Sec A(4) (c) PERMIT

Description: Failure by Tyson Foods Inc. to maintain a facility site map.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TXR05L352 Part III Sec E(2)(c)(1) PERMIT

Description: Failure by Tyson Foods Inc. to ensure that the facility and all of its systems of collection, treatment and disposal are properly operated and maintained in a manner that will minimize discharge of excessive pollutants.

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(c)

Description: Failure by Tyson Foods Inc. to prevent the discharge of stormwater mixed with raw materials to waters of the state.

Date: 04/13/2009 (738184) CN602410425

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TXR05L352 Part III Sec A(3)(a) PERMIT

Description: Failure by Tyson Poultry (TP) to identify all Non-Storm Water Discharges eligible for MSGP coverage.

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Failure by Tyson Poultry (TP) to prevent the unauthorized discharge of process wastewater to waters of the state.

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**
TYSON POULTRY, INC.	§	
RN102771177	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2009-0601-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 Tyson Poultry, Inc. ("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 feed mill at 7665 United States Highway 96 North in Tenaha, Shelby 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 April 28, 2009.

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

6. An administrative penalty in the amount of Fifteen Thousand Seven Hundred Fifty-Three Dollars ($15,753) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twelve Thousand Six Hundred Three Dollars ($12,603) of the administrative penalty and Three Thousand One Hundred Fifty Dollars ($3,150)

is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

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

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

9. The Executive Director recognizes that the Respondent implemented a record keeping system beginning in October 2008, for the scheduled cleaning and maintenance of the abatement equipment.

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:

1. Failed to obtain authorization for all emission sources, in violation of 30 TEX. ADMIN. CODE § 116.110(a)(1) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during a record review conducted on February 25, 2009. Specifically, the Soybean and Blended Product Baghouses were not listed as emission points on Air Permit No. 3797.

2. Failed to maintain records necessary to determine compliance with operating conditions of the permit, in violation of 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEATH & SAFETY CODE § 382.085(b), and Air Permit No. 3797, Special Condition 7B, as documented during a record review conducted on February 25, 2009. Specifically, the records were not being maintained for scheduled cleaning and maintenance of the abatement equipment from January 1, 2006 through September 30, 2008.

3. Failed to operate air pollution emissions capture and abatement equipment properly during normal operations, in violation of 30 TEX. ADMIN. CODE § 116.115(c), TEX. HEALTH & SAFETY CODE § 382.085(b) and Air Permit No. 3797, General Condition 9 and Special Condition 1, as documented during a record review conducted on February 25, 2009. Specifically, the Plant

continued to operate under normal conditions while the Lime, Salt, Phosphate, and Hammermill Baghouses were not in operation from October 2008 through January 2009, resulting in the release of approximately 81,420 pounds of particulate matter.

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: Tyson Poultry, Inc., Docket No. 2009-0601-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 after the effective date of this Agreed Order, ensure that all air pollution emissions capture and abatement equipment is operated properly during normal operations, in accordance with Air Permit No. 3797, General Condition 9;

   b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a., as described in Ordering Provision No. 2.e. below;

   c. Within 180 days after the effective date of this Agreed Order, obtain an amendment to Air Permit No. 3797 authorizing emissions from the Soybean and Blended Product Baghouses or cease operation of those baghouses;

   d. Within 195 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.c., as described in Ordering Provision No. 2.e. below; and

   e. The certifications required by Ordering Provisions Nos. 2.b. and 2.c. shall include detailed supporting documentation including photographs, receipts, and/or other records, 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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

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

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

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

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted

by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

John Sadler
For the Executive Director

1/14/2011
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.

Mike Smith
Signature

12/20/2010
Date

Mike Smith
Name (Printed or typed)
Authorized Representative of
Tyson Poultry, Inc.

Complex Manager
Title

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.