

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1355-AIR-E **TCEQ ID:** RN100216340 **CASE NO.:** 40232
RESPONDENT NAME: OGRE, Inc. dba Mur-Tex

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Mur-Tex, 511 Southwest 48th Avenue, Amarillo, Randall County</p> <p>TYPE OF OPERATION: Fiberglass tank manufacturing plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 7, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Allison Fischer, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2574; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Taylor D. Fyfe, President, OGRE, Inc., 7 Lakeway Centre Court, Suite 201, Lakeway, Texas 78734 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 3, 2010</p> <p>Date of NOV/NOE Relating to this Case: July 30, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>AIR</p> <p>1) Failed to submit semi-annual compliance status reports for the January 1, 2007 through June 30, 2007, July 1, 2007 through December 31, 2007, January 1, 2008 through June 30, 2008, July 1, 2008 through December 31, 2008 and January 1, 2009 through June 30, 2009 reporting periods [30 TEX. ADMIN. CODE §§ 101.20(2) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS §§ 63.9(h) and 63.5910(b), TEX. HEALTH & SAFETY CODE § 382.085(b) and Federal Operating Permit ("FOP") No. O-2664 Special Terms and Conditions No. 1(D)].</p> <p>2) Failed to submit a complete and accurate Annual Compliance Certification and associated semi-annual deviation reports for the reporting period of September 8, 2008 through September 7, 2009. Specifically, the annual compliance certification did not include all deviations and the corrected semi-annual deviation reports had incorrect start and end dates [30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(B) and 122.146, TEX. HEALTH & SAFETY CODE § 382.085(b) and FOP O-2664 General Terms and Conditions].</p>	<p>Total Assessed: \$18,000</p> <p>Total Deferred: \$3,600 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$400 (remaining \$14,000 due in 35 monthly payments of \$400 each)</p> <p>Compliance History Classification: Person/CN – Average Site/RN – Average</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. On October 16, 2009, added all annual compliance certification and semi-annual deviation report due dates to the master company calendar and personal smart phone calendars, with reminders set seven days prior to the end of each reporting period to ensure timely and complete submittal of deviation reports and annual certification reports;</p> <p>b. On October 19, 2009, submitted the missing semi-annual compliance status reports; and</p> <p>c. By August 6, 2010, reported deviations for the failure to submit the semi-annual compliance status reports.</p>

Additional ID No(s): RBo091A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	2-Aug-2010	Screening	18-Aug-2010	EPA Due	
	PCW	19-Aug-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	OGRE, Inc. dba Mur-Tex
Reg. Ent. Ref. No.	RN100216340
Facility/Site Region	1-Amarillo
Major/Minor Source	Major

CASE INFORMATION		No. of Violations	2
Enf./Case ID No.	40232	Order Type	1660
Docket No.	2010-1355-AIR-E	Government/Non-Profit	No
Media Program(s)	Air	Enf. Coordinator	Allison Fischer
Multi-Media		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	\$22,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7
Notes	No adjustment for compliance history.	\$0

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	\$4,500
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
<small>Total EB Amounts</small>	\$304	<small>*Capped at the Total EB \$ Amount</small>	
<small>Approx. Cost of Compliance</small>	\$3,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$18,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>			
Notes			
	Final Penalty Amount	\$18,000	

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$18,000
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DEFERRAL	20.0% Reduction	Adjustment	-\$3,600
<small>Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
Notes	Deferral offered for expedited settlement.		

PAYABLE PENALTY	\$14,400
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Screening Date 18-Aug-2010

Docket No. 2010-1355-AIR-E

PCW

Respondent OGRE, Inc. dba Mur-Tex

Policy Revision 2 (September 2002)

Case ID No. 40232

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100216340

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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 18-Aug-2010

Docket No. 2010-1355-AIR-E

PCW

Respondent OGRE, Inc. dba Mur-Tex

Policy Revision 2 (September 2002)

Case ID No. 40232

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100216340

Media [Statute] Air

Enf. Coordinator Allison Fischer

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.20(2) and 122.143(4), 40 Code of Federal Regulations §§ 63.9(h) and 63.5910(b), Tex. Health & Safety Code § 382.085(b) and Federal Operating Permit ("FOP") No. O-2664 Special Terms and Conditions No. 1(D)

Violation Description Failed to submit semi-annual compliance status reports for the July 1, 2006 through December 31, 2006, January 1, 2007 through June 30, 2007, July 1, 2007 through December 31, 2007, January 1, 2008 through June 30, 2008, July 1, 2008 through December 31, 2008 and January 1, 2009 through June 30, 2009 reporting periods.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		X			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 6 Number of violation days 1022

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

Violation Base Penalty \$15,000

Six single events are recommended (one for each semi-annual compliance status report).

Good Faith Efforts to Comply

25.0% Reduction \$3,750

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

Notes The Respondent returned to compliance on October 19, 2009, and the NOE is dated July 30, 2010.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Estimated EB Amount \$204

Statutory Limit Test

Violation Final Penalty Total \$11,250

This violation Final Assessed Penalty (adjusted for limits) \$11,250

Economic Benefit Worksheet

Respondent OGRE, Inc. dba Mur-Tex
Case ID No. 40232
Reg. Ent. Reference No. RN100216340
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$1,500	30-Jan-2007	19-Oct-2009	2.72	\$204	n/a	\$204
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 compliance status reports. The date required is the date the first compliance status report should have been submitted. The final date is the 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

\$204

Screening Date 18-Aug-2010
 Respondent OGRE, Inc. dba Mur-Tex
 Case ID No. 40232

Docket No. 2010-1355-AIR-E

PCW

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

Reg. Ent. Reference No. RN100216340

Media [Statute] Air

Enf. Coordinator Allison Fischer

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4), 122.145(2)(B) and 122.146, Tex. Health & Safety Code § 382.085(b) and FOP O-2664 General Terms and Conditions

Violation Description Failed to submit a complete and accurate Annual Compliance Certification and associated semi-annual deviation reports for the period of September 8, 2008 through September 7, 2009. Specifically, the annual compliance certification did not include all deviations and the corrected semi-annual deviation reports had incorrect start and end dates.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

Matrix Notes 100% of the rule requirement was not met

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3 Number of violation days 196

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

Violation Base Penalty \$7,500

Three single events are recommended based on the one incorrect annual compliance certification and the two incorrect semi-annual deviation reports.

Good Faith Efforts to Comply

10.0% Reduction \$750

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

Notes The Respondent returned to compliance on August 6, 2010, and the NOE is dated July 30, 2010.

Violation Subtotal \$6,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$100 Violation Final Penalty Total \$6,750

This violation Final Assessed Penalty (adjusted for limits) \$6,750

Economic Benefit Worksheet

Respondent OGRE, Inc. dba Mur-Tex
Case ID No. 40232
Reg. Ent. Reference No. RN100216340
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
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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	6-Apr-2009	6-Aug-2010	1.33	\$100	n/a	\$100
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 Annual Compliance Certifications and semi-annual deviation reports. The date required is the date the first deviation report should have been submitted. The final date is the 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

\$100

Compliance History Report

Customer/Respondent/Owner-Operator: CN602803918 OGRE, Inc. Classification: AVERAGE Rating: 21.33
Regulated Entity: RN100216340 Mur-Tex Classification: AVERAGE Site Rating: 21.33

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	RB0091A
	AIR OPERATING PERMITS	PERMIT	2664
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD007381551
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	68887
	AIR NEW SOURCE PERMITS	AFS NUM	4838100015
	AIR NEW SOURCE PERMITS	PERMIT	45066
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	RB0091A
	AIR NEW SOURCE PERMITS	REGISTRATION	82251
	STORMWATER	PERMIT	TXR05W957
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	RB0091A

Location: 511 SW 48TH AVE, AMARILLO, TX, 79110

TCEQ Region: REGION 01 - AMARILLO

Date Compliance History Prepared: August 03, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 03, 2005 to August 03, 2010

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: 9/1/2009 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 07/05/2006 (485121)
 - 2 11/07/2006 (516324)
 - 3 12/14/2007 (611438)
 - 4 10/21/2008 (705196)
 - 5 07/30/2010 (777574)

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
ENFORCEMENT ACTION
CONCERNING
OGRE, INC. DBA MUR-TEX
RN100216340**

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

AGREED ORDER DOCKET NO. 2010-1355-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 OGRE, Inc. dba Mur-Tex ("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 fiberglass tank manufacturing plant at 511 Southwest 48th Avenue in Amarillo, Randall 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 August 4, 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 Eighteen Thousand Dollars (\$18,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Hundred Dollars (\$400) of the

administrative penalty and Three Thousand Six Hundred Dollars (\$3,600) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Fourteen Thousand Dollars (\$14,000) of the administrative penalty shall be payable in 35 monthly payments of Four Hundred Dollars (\$400) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 has implemented the following corrective measures at the Plant:
 - a. On October 16, 2009, added all annual compliance certification and semi-annual deviation report due dates to the master company calendar and personal smart phone calendars, with reminders set seven days prior to the end of each reporting period to ensure timely and complete submittal of deviation reports and annual certification reports;
 - b. On October 19, 2009, submitted the missing semi-annual compliance status reports; and
 - c. By August 6, 2010, reported deviations for the failure to submit the semi-annual compliance status reports.
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 submit semi-annual compliance status reports for the January 1, 2007 through June 30, 2007, July 1, 2007 through December 31, 2007, January 1, 2008 through June 30, 2008, July 1, 2008 through December 31, 2008 and January 1, 2009 through June 30, 2009 reporting periods, in violation of 30 TEX. ADMIN. CODE §§ 101.20(2) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS §§ 63.9(h) and 63.5910(b), TEX. HEALTH & SAFETY CODE § 382.085(b) and Federal Operating Permit ("FOP") No. O-2664 Special Terms and Conditions No. 1(D), as documented during a record review conducted on July 3, 2010.
2. Failed to submit a complete and accurate Annual Compliance Certification and associated semi-annual deviation reports for the reporting period of September 8, 2008 through September 7, 2009, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(B) and 122.146, TEX. HEALTH & SAFETY CODE § 382.085(b) and FOP O-2664 General Terms and Conditions, as documented during a record review conducted on July 3, 2010. Specifically, the annual compliance certification did not include all deviations and the corrected semi-annual deviation reports had incorrect start and end dates.

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: OGRE Inc. dba Mur-Tex, Docket No. 2010-1355-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 Facility operations referenced in this Agreed Order.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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 Szellin
For the Executive Director

2/7/2011
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.

TDF
Signature

12/15/10
Date

TAYLOR D. FIFE
Name (Printed or typed)
Authorized Representative of
OGRE Inc. dba Mur-Tex

PRESIDENT
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.