

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 2

**DOCKET NO.:** 2010-0708-AIR-E **TCEQ ID:** RN100216761 **CASE NO.:** 39610**RESPONDENT NAME:** Basell USA Inc.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Basell USA Bayport Plant, 12001 Bay Area Boulevard, Pasadena, Harris County</p> <p><b>TYPE OF OPERATION:</b> Polypropylene plant</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 October 11, 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> Ms. Mary Pergande, Environmental Engineer, Basell USA Inc., 12001 Bay Area Boulevard, Pasadena, Texas 77507  Mr. Guy Tremblay, Site Manager, Basell USA Inc., 12001 Bay Area Boulevard, Pasadena, Texas 77507  <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> January 6, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 16, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>Failed to prevent the unauthorized release of 726.4 pounds ("lbs") of volatile organic compounds, 39.85 lbs of nitrous oxide, and 88.4 lbs of carbon monoxide from Flare 34 during an emissions event (Incident No. 132605) starting on November 29, 2009 and lasting 15 hours. The event was caused by the C Line Process Unit plugging from a sudden restriction downstream of the C Line Reactors. Because the Respondent was unable to provide sufficient information to demonstrate that the event was unavoidable, the demonstrations for affirmative defense in 30 TEX. ADMIN. CODE § 101.222 could not be met [30 TEX. ADMIN. CODE § 116.115(c), New Source Review Permit No. 9423, Special Condition 1, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$3,550</p> <p><b>Total Deferred:</b> \$710  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$0</p> <p>On or about January 6, 2009, the Respondent filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code now pending in the U.S. Bankruptcy Court for the Southern District of New York.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days of the effective date of this Agreed Order, develop and implement maintenance and operating procedures designed to prevent the recurrence of an emissions event due to the same root causes as those associated with the November 29, 2009 event; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): Air Account No. HG0323M



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	19-Apr-2010	<b>Screening</b>	22-Apr-2010	<b>EPA Due</b>	1-Jan-2011
	<b>PCW</b>	26-Apr-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Basell USA Inc.
<b>Reg. Ent. Ref. No.</b>	RN100216761
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	39610	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-0708-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Todd Huddleson
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit</b>	Minimum <input type="text" value="\$0"/> Maximum <input type="text" value="\$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**

**Culpability**   Enhancement *Subtotal 4*

**Notes**

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

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

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

**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**

**PAYABLE PENALTY**

Screening Date 22-Apr-2010

Docket No. 2010-0708-AIR-E

PCW

Respondent Basell USA Inc.

Policy Revision 2 (September 2002)

Case ID No. 39610

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100216761

Media [Statute] Air

Enf. Coordinator Todd Huddleson

### 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)	5	25%
	Other written NOVs	2	4%
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)	3	-3%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	2	-4%
<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) 42%

>> 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

The penalty was enhanced by one 1660-style agreed order, five NOVs for same or similar violations, two NOVs for dissimilar violations, three audit letters of intent, and two disclosures of violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 42%

Screening Date 22-Apr-2010

Docket No. 2010-0708-AIR-E

PCW

Respondent Basell USA Inc.

Policy Revision 2 (September 2002)

Case ID No. 39610

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100216761

Media [Statute] Air

Enf. Coordinator Todd Huddleson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), New Source Review Permit No. 9423, Special Condition 1, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent the unauthorized release of 726.4 pounds ("lbs") of volatile organic compounds, 39.85 lbs of nitrous oxide, and 88.4 lbs of carbon monoxide from Flare 34 during an emissions event (Incident no. 132605) starting on November 29, 2009 and lasting 15 hours, as documented during an investigation conducted on January 6, 2010. The event was caused by the C Line Process Unit plugging from a sudden restriction downstream of the C Line Reactors. Because the Respondent was unable to provide sufficient information to demonstrate that the event was unavoidable, the demonstrations for affirmative defense in 30 Tex. Admin. Code § 101.222 could not be met.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			x	25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants not exceeding 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 1 Number of violation days 1

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended, based on the November 29, 2009 event.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$22

Violation Final Penalty Total \$3,550

This violation Final Assessed Penalty (adjusted for limits) \$3,550

## Economic Benefit Worksheet

**Respondent** Basell USA Inc.  
**Case ID No.** 39610  
**Reg. Ent. Reference No.** RN100216761  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$500	29-Nov-2009	19-Oct-2010	0.89	\$22	n/a	\$22
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 develop and implement procedures to prevent plugging in the C Line Process. The Date Required is the date of the emissions event, and the Final Date is the estimated date for completion of corrective action.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$22

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600623326 Basell USA Inc.	Classification: AVERAGE	Rating: 0.73																																													
Regulated Entity:	RN100216761 BASELL USA BAYPORT PLANT	Classification: AVERAGE	Site Rating: 1.23																																													
ID Number(s):	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">AIR OPERATING PERMITS</td> <td style="width: 30%;">ACCOUNT NUMBER</td> <td style="width: 20%;">HG0323M</td> </tr> <tr> <td>AIR OPERATING PERMITS</td> <td>PERMIT</td> <td>1419</td> </tr> <tr> <td>PUBLIC WATER SYSTEM/SUPPLY</td> <td>REGISTRATION</td> <td>1011568</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>9423</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>REGISTRATION</td> <td>15459</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>19546</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>HG0323M</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>REGISTRATION</td> <td>75465</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>AFS NUM</td> <td>4820100291</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>REGISTRATION</td> <td>72217</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>EPA ID</td> <td>TXD077424885</td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE GENERATION</td> <td>SOLID WASTE REGISTRATION # (SWR)</td> <td>30422</td> </tr> <tr> <td>WATER LICENSING</td> <td>LICENSE</td> <td>1011568</td> </tr> <tr> <td>STORMWATER</td> <td>PERMIT</td> <td>TXR05K775</td> </tr> <tr> <td>AIR EMISSIONS INVENTORY</td> <td>ACCOUNT NUMBER</td> <td>HG0323M</td> </tr> </table>			AIR OPERATING PERMITS	ACCOUNT NUMBER	HG0323M	AIR OPERATING PERMITS	PERMIT	1419	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1011568	AIR NEW SOURCE PERMITS	PERMIT	9423	AIR NEW SOURCE PERMITS	REGISTRATION	15459	AIR NEW SOURCE PERMITS	PERMIT	19546	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG0323M	AIR NEW SOURCE PERMITS	REGISTRATION	75465	AIR NEW SOURCE PERMITS	AFS NUM	4820100291	AIR NEW SOURCE PERMITS	REGISTRATION	72217	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD077424885	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	30422	WATER LICENSING	LICENSE	1011568	STORMWATER	PERMIT	TXR05K775	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HG0323M
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Location:	12001 BAY AREA BLVD, PASADENA, TX, 77507																																															
TCEQ Region:	REGION 12 - HOUSTON																																															
Date Compliance History Prepared:	April 26, 2010																																															
Agency Decision Requiring Compliance History:	Enforcement																																															
Compliance Period:	April 26, 2005 to April 26, 2010																																															

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

Name: Todd Huddleson Phone: 239 - 2541

## 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: 03/20/2010 ADMINORDER 2009-0182-AIR-E
  - Classification: Moderate
  - Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THSC Chapter 382 382.085(b)
  - Rqmt Prov: Special Condition 1 PERMIT
  - Description: Failed to prevent unauthorized emissions during Incident No. 112149.
- 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 04/28/2005 (378308)
  - 2 05/04/2005 (378415)

3 06/13/2005 (372379)  
 4 07/28/2005 (402049)  
 5 08/02/2005 (398413)  
 6 08/18/2005 (404279)  
 7 08/23/2005 (404911)  
 8 08/29/2005 (405416)  
 9 12/30/2005 (250313)  
 10 03/10/2006 (449756)  
 11 05/26/2006 (467459)  
 12 05/26/2006 (467461)  
 13 05/26/2006 (467466)  
 14 06/05/2006 (462364)  
 15 06/12/2006 (462245)  
 16 06/13/2006 (462253)  
 17 07/31/2006 (638011)  
 18 08/30/2006 (488799)  
 19 12/13/2006 (516988)  
 20 12/15/2006 (512526)  
 21 04/05/2007 (555060)  
 22 07/10/2007 (564642)  
 23 01/18/2008 (609299)  
 24 04/01/2008 (612068)  
 25 05/14/2008 (726017)  
 26 05/22/2008 (646420)  
 27 08/28/2008 (701462)  
 28 12/05/2008 (700184)  
 29 01/23/2009 (721703)  
 30 02/16/2009 (726072)  
 31 04/02/2009 (680058)  
 32 04/24/2009 (741870)  
 33 07/01/2009 (740763)  
 34 07/01/2009 (747797)  
 35 10/20/2009 (703358)  
 36 01/08/2010 (783256)  
 37 04/15/2010 (798967)  
 38 04/16/2010 (790249)

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

Date: 06/13/2005 (372379) CN600623326  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)  
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.487(c)(2)(vii)  
 Description: Failed to include the facts to explain the delay of repair.  
 Date: 12/30/2005 (250313) CN600623326  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(4)(A)(ii)  
 Description: Failure to keep records of flare observations.  
 Self Report? NO Classification: Moderate  
 Citation: 19036, SC 11H PERMIT  
 30 TAC Chapter 115, SubChapter D 115.352(2)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 9423, SC 9H PERMIT  
 NSR 19546, SC 11H PERMIT  
 O-01419, SC 10 OP  
 Description: Failure to repair 3 leaking components within 15 days of detection.  
 Self Report? NO Classification: Moderate  
 Citation: 19036, SC 2 PERMIT  
 19546, SC 2 PERMIT  
 30 TAC Chapter 115, SubChapter D 115.352(4)  
 30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 40 CFR Part 60, Subpart VV 60.482-6

9423, SC 2 PERMIT  
 O-01419 OP  
 Description: Failure to install plugs, caps, or second valve on open ended lines in Catalloy unit.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter D 115.352(2)  
 40 CFR Part 60, Subpart VV 60.482-9

Description: Failure to repair a leaking component during unit shutdown.  
 Date: 12/15/2006 (512526) CN600623326  
 Self Report? NO Classification: Moderate  
 Citation: 19036, SC 11E PERMIT  
 19546, SC 10E PERMIT  
 30 TAC Chapter 115, SubChapter D 115.352(4)  
 30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-6(a)(1)  
 5C THC Chapter 382, SubChapter D 382.085(b)  
 9423, SC 9E PERMIT  
 O-01419, ST&C 10 OP

Description: Failure to cap or plug open ended lines.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter D 115.352(2)  
 30 TAC Chapter 115, SubChapter H 115.782(b)(2)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THC Chapter 382, SubChapter D 382.085(b)  
 O-01419, ST&C 1A OP

Description: Failure to conduct a first attempt at repair within 5 days of leak detection.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter D 115.354(2)(C)  
 30 TAC Chapter 115, SubChapter H 115.781(b)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-7(a)  
 5C THC Chapter 382, SubChapter D 382.085(b)  
 FOP O-01419, ST&C 1A OP

Description: Failure to conduct quarterly monitoring on 58 valves.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter H 115.725(a)(1)  
 5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to conduct testing of HRVOC vents to establish maximum emission rates.  
 Self Report? NO Classification: Moderate  
 Citation: 19036, SC 5 PERMIT  
 19546, SC 5A PERMIT  
 30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THC Chapter 382, SubChapter D 382.085(b)  
 9423, SC 3 PERMIT  
 O-01419 OP

Description: Failure to maintain minimum required BTU value of gas going to the flares.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter H 115.782(b)(2)  
 5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to conduct a first attempt at repair within 1 day after leak detection.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter H 115.781(b)(4)  
 5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failure to monitor a repaired/replaced component within 30 days after repair.  
 Date: 12/05/2008 (700184) CN600623326  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 101, SubChapter F 101.201(b)(1)(G)  
 5C THSC Chapter 382 382.085(b)

Description: Failed to meet the reporting and recordkeeping requirements  
 Date: 04/02/2009 (680058) CN600623326  
 Self Report? NO Classification: Moderate  
 Citation: 19546 Special Condition 1 PERMIT  
 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)  
 30 TAC Chapter 122, SubChapter B 122.143(4)

5C THSC Chapter 382 382.085(b)  
 O-01419 Special Terms and Conditions 8 OP  
 Description: Failure to maintain VOC emissions from the cataloy flare (EPN 81) below the MAERT limit. [CATEGORY B18 Violation]

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter H 115.725(a)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085(b)

O-01419 Special Terms and Conditions 1A OP  
 Description: Failure to maintain production rates below the limit set by HRVOC vent testing. [CATEGORY B18 Violation]

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter H 115.764(a)(2)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085(b)

O-01419 Special Terms and Conditions 1A OP  
 Description: Failure to manually sample cooling tower water when the automatic sampler was down from March 17 through 19, 2007. [CATEGORY B1 Violation]

Self Report? NO Classification: Moderate

Citation: 19546 Special Condition 10(H) PERMIT  
 19546 Special Condition 3 PERMIT  
 30 TAC Chapter 115, SubChapter D 115.352(2)  
 30 TAC Chapter 115, SubChapter H 115.782(c)(1)(B)  
 30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-9(a)  
 5C THSC Chapter 382 382.085(b)

O-01419 Special Terms and Conditions 1A OP  
 O-01419 Special Terms and Conditions 8 OP  
 Description: Failure to repair component on delay of repair list during unit shutdown. [CATEGORY C4 violation]

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter D 115.354(11)  
 30 TAC Chapter 115, SubChapter H 115.781(b)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085(b)

O-01419 Special Terms and Conditions 1A OP  
 Description: Failure to monitor connectors within 30 days of placing in VOC service. [CATEGORY C1 violation]

Date: 04/24/2009 (741870) CN600623326

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 5C THSC Chapter 382 382.085(b)  
 Special Condition 1 PERMIT

Description: Basell failed to prevent unauthorized emissions of ammonia from a refrigeration compressor.

Date: 10/20/2009 (703358) CN600623326

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)  
 Special Condition 1 PERMIT  
 Special Terms and Condition 8 OP

Description: Failed to operate within the permitted hourly emissions limits defined by the MAER Table of NSR Permit 19546. (Category B,14)

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)  
 Special Condition 1 PERMIT  
 Special Terms & Conditions 8 OP

Description: Failure to operate within the permitted hourly emissions limits defined by the MAER Table of NSR Permit 9423. (Category B,14)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter D 115.352(4)  
 30 TAC Chapter 115, SubChapter H 115.783(5)

30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT VV 60.482-1  
 5C THSC Chapter 382 382.085(b)  
 Special Condition 11E PERMIT  
 Special Condition 10E PERMIT  
 Special Terms & Condition 1 A OP  
 Special Terms & Condition 1E OP  
 Special Terms & Condition 8 OP  
 Description: Failure to cap or plug open ended lines. (Category C,10)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter H 115.725(a)(1)(A)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085(b)  
 Special Terms & Condition 1A OP  
 Description: Failure to maintain parameters below the tested vent rate. (Category B,14)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)  
 40 CFR Part 60, Subpart VV 60.482-7  
 5C THSC Chapter 382 382.085(b)  
 Special Terms & Conditions 1A OP  
 Description: Failure to monitor 456 valves on the E-line Process Unit. (Category B,1)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 115, SubChapter D 115.352(2)  
 30 TAC Chapter 115, SubChapter H 115.782(b)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085(b)  
 Special Terms & Condition 1E OP  
 Special Terms & Conditions 1A OP  
 Description: Failure to conduct first attempt at repair of leaking fugitive components. (Category C,1)  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 111, SubChapter B 111.205(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085  
 Special Terms & Condition 3 OP  
 Description: Failure to submit annual fire training notification. (Category C,3)

F. Environmental audits.

Notice of Intent Date: 08/25/2005 (434080)  
 Disclosure Date: 12/21/2005  
 Viol. Classification: Moderate  
 Citation: 30 TAC Chapter 116, SubChapter B 116.116(b)  
 Rqmt Prov: PERMIT Permit 19546  
 Description: Calculations of potential emissions from the flare (EPN 81) did not take into account possible peaks in flare loading.  
 Viol. Classification: Moderate  
 Citation: 30 TAC Chapter 116, SubChapter B 116.116(c)  
 Rqmt Prov: PERMIT Permit 19546  
 Description: The data for flow and VOC for the vent stream to EPN 81 as managed previously may not have adequately documented the total VOC in the vent stream on an hourly basis.  
 Notice of Intent Date: 12/05/2006 (534262)  
 Disclosure Date: 07/27/2007  
 Viol. Classification: Minor  
 Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(8)  
 30 TAC Chapter 335, SubChapter E 335.112(a)(9)  
 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(A)  
 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(B)  
 Description: Failure to maintain records of weekly inventory, inspection of waste transfer, and daily inspection of D885-hazardous waste accumulation vessel.  
 Viol. Classification: Minor  
 Citation: 30 TAC Chapter 335, SubChapter C 335.69(e)  
 Description: Failure to meet satellite accumulations time limit.  
 Viol. Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.62

Description: Failed to classify Tank D8707 Process Oil.

Viol. Classification: Minor

Citation: 40 CFR Chapter 273, SubChapter I, PT 273, SubPT C 273.39

Description: Failed to maintain a universal waste inventory system.

Notice of Intent Date: 07/02/2008 (32792)

No DOV Associated

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  
BASELL USA INC.  
RN100216761**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-0708-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 Basell USA 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 polypropylene plant at 12001 Bay Area Boulevard, in Pasadena, Harris 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 21, 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 Three Thousand Five Hundred Fifty Dollars (\$3,550) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). On or about January 6, 2009, the Respondent filed a petition for bankruptcy

relief pursuant to Chapter 11 of the United States Code now pending in the U.S. Bankruptcy Court for the Southern District of New York. Debtor remains as a debtor in possession and no trustee or examiner has been appointed. The Automatic Stay imposed by the Federal Bankruptcy Code [specifically, 11 USC § 362(a)] does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 USC § 362(b)(4). Accordingly, TCEQ [a governmental unit as defined under 11 USC § 101 (27)] is expressly excepted from the automatic stay in pursuing enforcement of the State's Environmental Protection Laws, and in seeking to liquidate its damages for such violations. These violations having been incurred post-petition are entitled to be treated as an administrative expense priority for purposes of the claims hierarchy of payment from the bankruptcy estate. So long as the Debtor's bankruptcy proceedings are pending and/or until relief from the automatic stay is granted, the TCEQ will, however, not seek to execute upon any monetary judgment obtained without first approaching the United States Bankruptcy Court where the Debtor's bankruptcy case is pending as necessary, after consultation with the Office of the Attorney General. Seven Hundred Ten Dollars (\$710) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. Any 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 upon approval by the bankruptcy court.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to prevent the unauthorized release of 726.4 pounds ("lbs") of volatile organic compounds, 39.85 lbs of nitrous oxide, and 88.4 lbs of carbon monoxide from Flare 34 during an emissions event (Incident No. 132605) starting on November 29, 2009 and lasting 15 hours, in violation of 30 TEX. ADMIN. CODE § 116.115(c), New Source Review Permit No. 9423, Special Condition 1, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on January 6, 2010. The event was caused by the C Line Process Unit plugging from a sudden restriction downstream of the C Line Reactors. Because the Respondent was unable to provide sufficient information to demonstrate that the event was unavoidable, the demonstrations for affirmative defense in 30 TEX. ADMIN. CODE § 101.222 could not be met.

### 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 be assessed an administrative penalty as set forth in Section I, Paragraph 6 above. The assessment 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. However, the agreement by the Respondent to the assessment of a penalty is expressly not in lieu of or an alternative to compliance with all injunctive requirements in this Agreed Order. 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 when paid shall be made payable to "TCEQ" and sent with the notation "Re: Basell USA Inc., Docket No. 2010-0708-AIR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days of the effective date of this Agreed Order, develop and implement maintenance and operating procedures designed to prevent the recurrence of an emissions event due to the same root causes as those associated with the November 29, 2009 event; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

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

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

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

\_\_\_\_\_  
Date 3/11/2011

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 is materially relying on such representation.

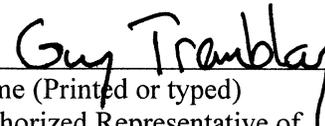
I also understand that failure to comply with the Ordering Provisions, if any, in this order may result in:

- 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;
- 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 8/2/10

  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Basell USA Inc.

\_\_\_\_\_  
Title Site manager

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