

Executive Summary – Enforcement Matter – Case No. 14612
EBAA IRON, INC.
RN102518495
Docket No. 2004-0505-WQ-E

Order Type:
Agreed Order

Media:
WQ

Small Business:
No

Location(s) Where Violation(s) Occurred:
5.5 miles southeast of Albany, Texas on State Highway 6, Shackelford County

Type of Operation:
Iron pipe component manufacturing facility

Other Significant Matters:

Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: The commission issued a prior order in this case on October 21, 2009 (Prior Order). The Respondent sought judicial review of the order in district court. The district court remanded the matter to the commission so that the ED and the Respondent could present this proposed agreed order to supercede the Prior Order.
Interested Third-Parties: None

Texas Register Publication Date: May 13, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,050

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$1,050

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: N/A

Name of SEP: N/A

Compliance History Classifications:

Person/CN – Average

Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: January 15 - 30, 2003
Date(s) of NOV(s): August 13, 2003
Date(s) of NOE(s): November 19, 2003

Violation Information

Failed to allow employees of the Commission to conduct an unrestricted inspection of the Facility for the purpose of investigating conditions relating to rules and regulations of the Commission and TPDES Permit No. TXR05K279 [TEX. WATER CODE § 26.014, TEX. HEALTH & SAFETY CODE § 361.032, 30 TEX. ADMIN. CODE § 305.125(1), 40 C.F.R. § 122.41(i), and TPDES Permit No. TXR05K279, Part III, Section B.(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

Immediately, allow employees of the Commission to take photographs during inspections of the Facility for the purpose of investigating conditions relating to rules and regulations of the Commission.

Litigation Information

Date Petition(s) Filed: March 24, 2008
Date Answer(s) Filed: April 14, 2008
SOAH Referral Date: May 28, 2008
Hearing Date(s):
Preliminary hearing: July 24, 2008
Evidentiary hearing: January 27, 2009
PFD approved at Agenda: October 7, 2009
Order Issued: October 21, 2009
MFR filed: November 13, 2009
Petition for Judicial Review filed: January 8, 2010
AG referral: January 26, 2010
District Court case remanded: April 26, 2011
Settlement Date: April 28, 2011

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Thomas Greimel, Water Enforcement Section, (512) 239- 5690

TCEQ Regional Contact: Mike Taylor, Abilene Regional Office, (325) 698-6125

Respondent: Joy Cole, Safety & Environmental Manager, EBAA Iron, Inc., P. O. Box 877, Eastland, TX 76448

Respondent's Attorney: McCord Wilson, Rader & Campbell, P.C., 2777 Stemmons Freeway, Suite 1125, Dallas, Texas 75207

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 6/12/2003

DATES

PCW Screening Priority Due EPA Due

RESPONDENT INFORMATION

Respondent
 Respondent/Site ID No(s)
 Facility/Site Region Major/Minor Source

CASE INFORMATION

Enf./Case ID No(s)
 Docket No. No. Violations
 Case Priority Order Type
 Enf. Coordinator EC's Team
 Media Program(s)
 Admin. Penalty \$ Limit Minimum Maximum

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 Reduction Subtotal 5

	Before NOV	NOV to EDRP/ Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
None of the above	<input checked="" type="checkbox"/>	<small>(mark with small x)</small>	+
Notes	<input type="text" value="The respondent is not yet in compliance."/>		

Economic Benefit Enhancement* Subtotal 6

	<input type="text" value="\$ 100"/>	Total EB Amounts	*	
	<input type="text" value="\$ 100"/>	Approx. Cost of Compliance	Capped at the Total EB \$ Amount	=

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)

Notes =

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL 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 4/4/2011

Docket Number 2004-0505-WQ-E

PCW

Respondent EBAA Iron, Inc.

Policy Revision 2 (09/02)

Case ID No. CCEDS Case ID No. 14612

PCW Revision 6/12/2003

Respondent/Site ID No. Texas Pollutant Discharge Elimination System (TPDES) Permit No. TXR05K279; Reg. Ent. ID. RN102518495

Media [Statute] Water Quality

Enf. Coordinator Thomas Greimel

Site Address 5.5 miles southeast from Albany on State Highway 6, Shackelford County

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Table with 4 columns: Component, Number of..., Enter Number Here, Adjust. Rows include NOVs, Orders, Judgments and Consent Decrees, Convictions, Emissions, Audits, and Other.

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No Select Yes/No Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer Select High, Average or Poor Adjustment Percentage (Subtotal 7) 0%

Compliance History Summary

Compliance History Notes The respondent received one NOV with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3 & 7) 5%

Screening Date 8-Apr-04

Docket Number 2004-0505-WQ-E

PCW

Respondent EBAA Iron, Inc.

Policy Revision 2 (09/02)

Case ID No. CCEDS Case ID No. 14612

PCW Revision 6/12/2003

Respondent/Site ID No. Texas Pollutant Discharge Elimination System (TPDES) Permit No. TXR05K279; Reg. Ent. ID. RN102518495

Media [Statute] Water Quality

Enf. Coordinator Thomas Greimel

Violation Number 1

Primary Rule Cite 30 Tex. Admin. Code § 305.125(1); TPDES Permit No. TXR05K279, Part III, Sections B.(a)

Secondary Cite(s) Tex. Water Code § 26.014; Tex. Health & Safety Code § 361.032 and 40 CFR § 122.41(i)

Violation Description Failure to allow employees of the commission to conduct an unrestricted inspection of the Facility for the purpose of investigating conditions relating to rules and regulations of the commission and TPDES Permit No. TXR05K279, as documented during the investigation. Specifically, a TCEQ investigator was denied permission to photograph an area west of the foundry outside an overhead door, the plug storage area located south of the foundry, an area around two metal collection bins located east of the foundry, an area around three bag houses located east of the foundry, and a drum storage area located northeast of the foundry.

Base Penalty \$ 1,000

» Environmental, Property and Human Health Matrix

Harm

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent

» Programmatic Matrix

OR	Falsification	Major	Moderate	Minor
			x	

Percent 10%

Matrix Notes 100% of the rule requirement has not been met.

Adjustment -\$ 9,000

Base Penalty Subtotal \$ 1,000

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	<input type="checkbox"/>
monthly	<input type="checkbox"/>
quarterly	<input type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty \$ 1,000

Events Notes One single event is recommended for the January 15, 2003 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$ 100

Violation Final Penalty total \$ 1,050

This Violation Final Assessed Penalty (adjusted for limits) \$ 1,050

Violation Final Penalty total divided by

Number of violation days 1

Equals this Violation Final Penalty per day \$ 1,050

Economic Benefit Worksheet

Respondent EBAA Iron, Inc.
ID Number(s) CCEDS Case ID No. 14612
Media [Statute] Water Quality
Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$ 0	\$ 0	\$ 0
Buildings				0.0	\$ 0	\$ 0	\$ 0
Other (As needed)				0.0	\$ 0	\$ 0	\$ 0
Engineering/construction				0.0	\$ 0	\$ 0	\$ 0
Land				0.0	\$ 0	n/a	\$ 0
Record Keeping System				0.0	\$ 0	n/a	\$ 0
Training/Sampling				0.0	\$ 0	n/a	\$ 0
Remediation/Disposal				0.0	\$ 0	n/a	\$ 0
Permit Costs				0.0	\$ 0	n/a	\$ 0
Other (As Needed)				0.0	\$ 0	n/a	\$ 0
Notes for DELAYED costs							

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$ 0	\$ 0	\$ 0
Personnel				0.0	\$ 0	\$ 0	\$ 0
Inspection/Reporting/Sampling				0.0	\$ 0	\$ 0	\$ 0
Supplies/equip				0.0	\$ 0	\$ 0	\$ 0
Financial Assurance [2]				0.0	\$ 0	\$ 0	\$ 0
ONE-TIME avoided costs [3]	\$ 100	1/15/2003	1/15/2003	0.0	\$ 0	\$ 100	\$ 100
Other (as needed)				0.0	\$ 0	\$ 0	\$ 0
Notes for AVOIDED costs							
Est mated additional personnel costs to allow a complete investigation which would allow photographic documentation.							

Approx Cost of Compliance \$ 100
TOTAL \$ 100

Compliance History

Customer/Respondent/Owner-Operator:	CN600129100	EBAA Iron, Inc.	Classification: AVERAGE	Rating: 2.560
Regulated Entity:	RN102518495	EBAA IRON JACK RABBIT	Classification: AVERAGE	Site Rating: 4.67
ID Number(s):	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER		SH0016A
	AIR NEW SOURCE PERMITS	PERMIT		31241
	STORMWATER	PERMIT		TXR05K279
Location:	5.5 MILES SOUTHEAST FROM ALBANY, TX ON STATE HIGHWAY 6		Rating Date: 9/1/03	Repeat Violator: NO
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	April 08, 2004			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 08, 1999 to April 08 2004			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Thomas Greimel</u>	Phone:	<u>(512) 239-5690</u>	

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: 9/1/2010 Repeat Violator:

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.
 - 1 08/14/2001
 - 2 08/13/2003
 - 3 11/18/2003
- E. Written notices of violations (NOV).
 - Date: 08/13/2003
 - Self Report? NO Classification: Minor
 - Rqmt Prov: OP IA
 - Description: Failure to develop and implement good housekeeping measures
 - Self Report? NO Classification: Minor
 - Rqmt Prov: OP IA
 - Description: Failure to include a properly signed Certification of Evaluation of Storm Water Systems for Non-Storm Water Discharges according to Title 30 Texas Administrative Code (TAC) Chapter 305.128.
 - Self Report? NO Classification: Minor
 - Rqmt Prov: OP IA
 - Description: Failure to establish Best Management Practices (BMPs) within the facility's property to reduce the discharge and possible discharge of potential pollutants in storm water.
 - Self Report? NO Classification: Moderate
 - Rqmt Prov: OP IA
 - Description: Failure to conduct visual examinations of storm water discharges from each outfall on a quarterly basis.
 - Self Report? NO Classification: Moderate
 - Rqmt Prov: OP IA
 - Description: Failure to monitor for numeric effluent limitations (hazardous metals) for the year 2002 prior to Dec. 31, 2002.
 - Self Report? NO Classification: Major
 - Citation: 2D TWC Chapter 26, SubChapter A 26.014
40 CFR Chapter 122, SubChapter D, PT 122, SubPT C 122.41(i)
5B THC Chapter 361, SubChapter A 361.032(b)
 - Rqmt Prov: OP IA
 - Description: Failure to allow an investigator of the Texas Commission on Environmental Quality (TCEQ) permission to photograph areas of the facility in an attempt to document alleged violations identified during a Comprehensive Compliance Investigation (CCI).
- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
EBAA IRON, INC.;
RN102518495**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2004-0505-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding EBAA Iron, Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent EBAA Iron, Inc., represented by McCord Wilson of the law firm Rader & Campbell, P.C., appear before the Commission and together stipulate that:

1. Respondent owns and operates an iron pipe component manufacturing facility located 5.5 miles southeast of Albany, Texas on State Highway 6 in Shackelford County, Texas (the "Facility"). At the time of the alleged violation, Respondent held Texas Pollutant Discharge Elimination System ("TPDES") Permit No. TXR05K279 for industrial storm water discharges.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one thousand fifty dollars (\$1,050.00) of the administrative penalty.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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

1. During an investigation conducted on January 15-30, 2003, a TCEQ Abilene Regional Office investigator documented that Respondent violated TEX. WATER CODE § 26.014; TEX. HEALTH & SAFETY CODE § 361.032; 30 TEX. ADMIN. CODE § 305.125(1); TPDES Permit No. TXR05K279, Part III, Section B.(a); and 40 C.F.R. § 122.41(i), by failing to allow employees of the Commission to conduct an unrestricted inspection of the Facility for the purpose of investigating conditions relating to rules and regulations of the Commission and TPDES Permit No. TXR05K279. Specifically, a TCEQ investigator was denied permission to photograph an area west of the foundry outside an overhead door, the plug storage area south of the foundry, an area around two metal collection bins located east of the foundry, an area around three bag houses located east of the foundry, and a drum storage area located northeast of the foundry.
2. Respondent received notice of the violation on or about November 24, 2003.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph No. 5. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here.

2. Immediately upon the effective date of this Agreed Order, Respondent shall allow employees of the Commission to take photographs during inspections of the Facility for the purpose of investigating conditions relating to rules and regulations of the Commission, in accordance with 30 TEX. ADMIN. CODE § 305.125(1); TEX. WATER CODE § 26.014; TEX. HEALTH & SAFETY CODE § 361.032; TPDES Permit No. TXR05K279, Part III, Section B.(a); and 40 C.F.R. § 122.41(i).
3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against 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.
8. 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

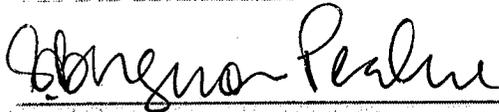
Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

5/17/2011

Date:

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of EBAA Iron, Inc., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature

28 Apr 11

Date:

Earl T Bradley

Name (Printed or typed)
Authorized representative of
EBAA Iron, Inc.

CEO

Title: