

**CAPTION: Docket No. 2010-1945-AIR-E. Consideration of an Agreed Order assessing administrative penalties against Air Products LLC in Harris County; RN100222215; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (John Muennink, Laurie Eaves)**

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2010-1945-AIR-E **TCEQ ID:** RN100222215 **CASE NO.:** 40800  
**RESPONDENT NAME:** Air Products LLC

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Air Products Baytown Plant, 5503 West Baker Road, Baytown, Harris County</p> <p><b>TYPE OF OPERATION:</b> Chemical 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 May 2, 2011. 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. John Muennink, Enforcement Division, Enforcement Team 5, MC R-12, (713) 422-8970; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. David Hefele, West Gulf Coast Operations Manager, Air Products LLC, 5503 West Baker Road, Baytown, Texas 77520  <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 type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" 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> September 30, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> November 15, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>AIR</b></p> <p>Failed to comply with the 10 parts per million ("ppm") ammonia ("NH<sub>3</sub>") and 65 ppm carbon monoxide ("CO") concentration limits. Specifically, from December 16, 2009 to December 27, 2009, Emissions Point No. ("EPN") 7, reached a concentration of 44.5 ppm for NH<sub>3</sub>, and from March 12, 2010 to March 29, 2010, EPN 7 reached a concentration of 34.3 ppm for NH<sub>3</sub>. On April 2, 2010, EPN 7 reached a concentration of 265.5 ppm for CO, and in two instances on April 3, 2010, EPN 7 reached a concentration of 535.7 ppm and 71 ppm for CO. The exceedances of the concentration limits resulted in the release of a total of 784.1 pounds of CO emissions [30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), Federal Operating Permit No. O2172, Special Terms and Conditions No. 12 and Permit No. 35873, Special Conditions No. 8].</p>	<p><b>Total Assessed:</b> \$5,450</p> <p><b>Total Deferred:</b> \$1,090  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$4,360</p> <p><b>Compliance History Classifications:</b>                      Person/CN - Average                      Site/RN - Average</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. On April 8, 2010, took down three catalyst beds for repair after determining that dust entering the skid valves from the three catalyst beds were causing the valves to leak, and the boiler stack, EPN 7, began operating within the CO concentration limit;</p> <p>b. On April 14, 2010, put the three catalyst beds back into service and EPN 7 continued to operate within the CO concentration limits;</p> <p>c. On April 28, 2010, serviced the NH<sub>3</sub> supply valve and verified that it was not leaking; and</p> <p>d. On August 12, 2010, conducted supplemental environmental awareness training pertaining to the permit limits for NH<sub>3</sub>, nitrogen oxide and CO during different operating modes, including startup and transition modes, in order to ensure that the appropriate concentrations are introduced into the process.</p>

Additional ID No(s): Air Account HX1546N



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	15-Nov-2010	<b>Screening</b>	2-Dec-2010	<b>EPA Due</b>	
	<b>PCW</b>	20-Jan-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Air Products LLC		
<b>Reg. Ent. Ref. No.</b>	RN100222215		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40800	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1945-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>	John Muennink
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	34.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,700
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Notes: Enhancement for two NOVs with same/similar violations, two NOVs with dissimilar violations and one order with denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$1,250
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$65  
 Approx. Cost of Compliance \$2,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$5,450
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$5,450
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$5,450
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$1,090
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$4,360
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Screening Date 2-Dec-2010

Docket No. 2010-1945-AIR-E

PCW

Respondent Air Products LLC

Policy Revision 2 (September 2002)

Case ID No. 40800

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100222215

Media [Statute] Air

Enf. Coordinator John Muennink

### 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> )	2	10%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <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%

Please Enter Yes or No

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

**Adjustment Percentage (Subtotal 2)** 34%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs with same/similar violations, two NOVs with dissimilar violations and one order with denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 34%

Screening Date 2-Dec-2010

Docket No. 2010-1945-AIR-E

PCW

Respondent Air Products LLC

Policy Revision 2 (September 2002)

Case ID No. 40800

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100222215

Media [Statute] Air

Enf. Coordinator John Muennink

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 116.115(c) and 122.143(4), Tex. Health & Safety Code § 382.085(b), Federal Operating Permit No. O2172, Special Terms and Conditions No. 12 and Permit No. 35873, Special Conditions No. 8

Violation Description Failed to comply with the 10 parts per million ("ppm") ammonia ("NH3") and 65 ppm carbon monoxide ("CO") concentration limits. Specifically, from December 16, 2009 to December 27, 2009, the boiler stack, Emissions Point No. ("EPN") 7, reached a concentration of 44.5 ppm for NH3, and from March 12, 2010 to March 29, 2010, EPN 7 reached a concentration of 34.3 ppm for NH3. On April 2, 2010, EPN 7 reached a concentration of 265.5 ppm for CO, and in two instances on April 3, 2010, EPN 7 reached a concentration of 535.7 ppm and 71 ppm for CO. The exceedances of the concentration limits resulted in the release of a total of 784.1 pounds of CO emissions.

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 an insignificant amount of pollutants that do not exceed levels protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 30 Number of violation days

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

Violation Base Penalty \$5,000

Two quarterly events are recommended based on the quarters during which the violations occurred.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes The Respondent completed corrective measures on August 12, 2010, prior to the November 15, 2010 NOE.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$65

Violation Final Penalty Total \$5,450

This violation Final Assessed Penalty (adjusted for limits) \$5,450

# Economic Benefit Worksheet

**Respondent** Air Products LLC  
**Case ID No.** 40800  
**Req. Ent. Reference No.** RN100222215  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime 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				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)	\$2,000	16-Dec-2009	12-Aug-2010	0.65	\$65	n/a	\$65

**Notes for DELAYED costs**

Estimated expense to implement measures and procedures designed to ensure compliance with the permitted NH3 and CO concentration limits for EPN 7. The Date Required is the initial date of non-compliance. The Final Date is the date that corrective measures were completed.

### 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

\$2,000

**TOTAL**

\$65

# Compliance History

Customer/Respondent/Owner-Operator: CN602299257 Air Products LLC Classification: AVERAGE Rating: 3.13  
 Regulated Entity: RN100222215 AIR PRODUCTS BAYTOWN PLANT Classification: AVERAGE Site Rating: 4.23

ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE INDUSTRIAL AND HAZARDOUS WASTE	EPA ID SOLID WASTE REGISTRATION # (SWR)	TXR000032755 86186
	AIR OPERATING PERMITS AIR OPERATING PERMITS AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION AIR EMISSIONS INVENTORY	ACCOUNT NUMBER PERMIT REGISTRATION REGISTRATION PERMIT ACCOUNT NUMBER REGISTRATION AFS NUM EPA ID REGISTRATION ACCOUNT NUMBER	HX1546N 2172 93446 92028 35873 HX1546N 84536 4820101528 PSDTX1044 77660 HX1546N

Location: 5503 W BAKER RD, BAYTOWN, TX, 77520

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: December 01, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 01, 2005 to December 01, 2010

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

Name: John Muennink Phone: (713) 422-8970

## 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? Yes
3. If Yes, who is the current owner/operator?
 

OWN	Air Products and Chemicals, Inc.
OWNOPR	Air Products LLC
4. If Yes, who was/were the prior owner(s)/operator(s)?
 

OWNOPR	Air Products, L.P.
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5. When did the change(s) in owner or operator occur? 06/27/2007
6. Rating Date: 9/1/2010 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.

Effective Date: 01/26/2007 ADMINORDER 2006-0903-AIR-E  
 Classification: Moderate  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 Rqmt Prov: No. 35873, Special Condition No. 1 PERMIT  
 Description: Air Products failed to prevent unauthorized emissions of 5,895 pounds of propylene from the accumulation and the release of non-condensibles from the propylene condenser.

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 02/28/2006 (457046)  
 2 02/28/2006 (457251)  
 3 09/01/2006 (462828)  
 4 05/26/2006 (464310)  
 5 05/31/2006 (466412)  
 6 08/17/2007 (532616)  
 7 02/09/2007 (539458)  
 8 12/03/2007 (595644)  
 9 04/03/2008 (636442)  
 10 08/14/2008 (686721)  
 11 11/10/2009 (767281)  
 12 04/19/2010 (795343)  
 13 11/12/2010 (858354)  
 14 11/16/2010 (865216)

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

Date: 08/17/2007 (532616) CN602299257  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 101, SubChapter F 101.201(b)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THC Chapter 382, SubChapter D 382.085(b)  
 O-02172, Special Condition 2F OP

Description: Failure to create a final record within two weeks of recordable incidents.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 111, SubChapter A 111.111(a)(1)(F)(iii)  
 30 TAC Chapter 122, SubChapter B 122.142(b)(2)(B)(ii)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THC Chapter 382, SubChapter D 382.085(b)  
 O-02172, Special Condition 3.A. (iii) OP

Description: Failure to conduct annual visible emissions.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.142(b)(2)(B)(ii)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THC Chapter 382, SubChapter D 382.085(b)  
 O-02172, Special Condition 10 OP  
 Description: Failure to comply with the 10 ppm ammonia permit limit, which constitutes a violation of NSR Permit 35873, Special Condition No. 8.

Date: 11/10/2009 (767281) CN602299257  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085(b)  
 NSR 35873 PERMIT  
 Description: Failure to document corrective action taken when CEMS daily zero/span two times drift test for low range NOx.

Date: 11/15/2010 (858354) CN602299257  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085(b)  
 FOP SC 12 OP  
 NSR SC 12B(2) PERMIT  
 Description: Failure to document corrective action taken when CEMS daily zero/span two times drift test for low range stack NOx, and to conduct timely Cylinder Gas Audit. (Category C1)

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 30 TAC Chapter 122, SubChapter B 122.143(4)  
 5C THSC Chapter 382 382.085(b)  
 FOP SC 12 OP  
 NSR SC 8B PERMIT

Description: Failure to keep Pressure Swing Absorber in operation sufficiently. (Category C4)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
FOP SC 12 OP  
NSR SC 8A PERMIT

Description: Failure to comply with the 29.4 ppm NOx permit limit. (Category B18)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 122, SubChapter B 122.165(c)  
5C THSC Chapter 382 382.085(b)

Description: Failure to sign the PCC certification form (OP-CRO1) by the duly authorized representative (DAR). (Category B3)

Date: 11/16/2010 (865216) CN602299257

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)

Description: Failure to update Notice of Registration to reflect current conditons at site.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(4)(A)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT B 265.16(c)

Description: Air Products failed to conduct annual hazardous waste training for two employees involved in working with hazardous wastes.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(A)  
40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.174

Description: Failure to conduct weekly inspections of its less than 90 day hazardous waste container storage area.

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  
AIR PRODUCTS LLC  
RN100222215**

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

**AGREED ORDER  
DOCKET NO. 2010-1945-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 Air Products LLC ("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 chemical plant at 5503 West Baker Road in Baytown, 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 November 20, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand Four Hundred Fifty Dollars (\$5,450) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Three Hundred Sixty Dollars (\$4,360) of the administrative penalty and One Thousand Ninety Dollars (\$1,090) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
  - a. On April 8, 2010, took down three catalyst beds for repair after determining that dust entering the skid valves from the three catalyst beds were causing the valves to leak, and the boiler stack, Emissions Point No. ("EPN") 7, began operating within the carbon monoxide ("CO") concentration limit;
  - b. On April 14, 2010, put the three catalyst beds back into service and EPN 7 continued to operate within the CO concentration limits;
  - c. On April 28, 2010, serviced the ammonia ("NH<sub>3</sub>") supply valve and verified that it was not leaking; and
  - d. On August 12, 2010, conducted supplemental environmental awareness training pertaining to the permit limits for NH<sub>3</sub>, nitrogen oxide and CO during different operating modes, including startup and transition modes, in order to ensure that the appropriate concentrations are introduced into the process.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to comply with the 10 parts per million ("ppm") NH<sub>3</sub> and 65 ppm CO concentration limits, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), Federal Operating Permit No. O2172, Special Terms and Conditions No. 12 and Permit No. 35873, Special Conditions No. 8, as documented during a record review conducted on September 30, 2010. Specifically, from December 16, 2009 to December 27, 2009, EPN 7, reached a concentration of 44.5 ppm for NH<sub>3</sub>, and from March 12, 2010 to March 29, 2010, EPN 7 reached a concentration of 34.3 ppm for NH<sub>3</sub>. On April 2, 2010, EPN 7 reached a concentration of 265.5 ppm for CO, and in two instances on April 3, 2010, EPN 7 reached a concentration of 535.7 ppm and 71 ppm for CO. The exceedances of the concentration limits resulted in the release of a total of 784.1 pounds of CO emissions.

## 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: Air Products LLC, Docket No. 2010-1945-AIR-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or

otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

4/12/2011  
\_\_\_\_\_  
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.

  
\_\_\_\_\_  
Signature

2-18-11  
\_\_\_\_\_  
Date

David C. Hefele  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Air Products LLC

WGC Operations Mgr.  
\_\_\_\_\_  
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.