

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1352-IHW-E **TCEQ ID:** RN100213719 **CASE NO.:** 40226  
**RESPONDENT NAME:** Johns Manville

<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 type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" 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> Cleburne Plant, 200 West Industrial Boulevard, Cleburne, Johnson County</p> <p><b>TYPE OF OPERATION:</b> Insulation manufacturing plant</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input 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 February 21, 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> Ms. Theresa Hagood, Enforcement Division, Enforcement Team 6, MC 128, (512)239-2540; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Eric R. Dobransky, Plant Manager, Johns Manville, 200 West Industrial Boulevard, Cleburne, Texas 76033  <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> April 15, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 27, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WASTE</b></p> <p>Failed to prevent the dilution of a restricted waste as a substitute for treatment. Specifically, the baghouse dust which was characteristically hazardous for chromium was comingled with plant trash and disposed of as a class 2 waste [30 TEX. ADMIN. CODE § 335.431 and 40 CODE OF FEDERAL REGULATIONS § 268.3(a)].</p>	<p><b>Total Assessed:</b> \$8,911</p> <p><b>Total Deferred:</b> \$1,782  <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> \$7,129</p> <p><b>Compliance History Classification:</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 procedures on January 19, 2010 to prevent the dilution of hazardous baghouse waste and ensure that it is managed and disposed of properly.</p>

Additional ID No(s): 33650



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	2-Aug-2010	Screening	17-Aug-2010	EPA Due	
	PCW	20-Aug-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Johns Manville
Reg. Ent. Ref. No.	RN100213719
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	40226	No. of Violations	1
Docket No.	2010-1352-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Theresa Hagood
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000
		EC's Team	Enforcement Team 6

## 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	\$6,164
Approx. Cost of Compliance	\$6,359

\*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.

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 17-Aug-2010

Docket No. 2010-1352-IHW-E

PCW

Respondent Johns Manville

Policy Revision 2 (September 2002)

Case ID No. 40226

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100213719

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Theresa Hagood

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	5	10%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> 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 five NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 17-Aug-2010

Docket No. 2010-1352-IHW-E

PCW

Respondent Johns Manville

Policy Revision 2 (September 2002)

Case ID No. 40226

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100213719

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Theresa Hagood

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.431 and 40 Code of Federal Regulations § 268.3(a)

Violation Description Failed to prevent the dilution of a restricted waste as a substitute for treatment. Specifically, the baghouse dust which was characteristically hazardous for chromium was comingled with plant trash and disposed of as a class 2 waste.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are 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

41 Number of violation days

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 from the December 9, 2009 violation date to the January 19, 2010 date when the Respondent ceased comingling of waste.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6,164

Violation Final Penalty Total \$8,911

This violation Final Assessed Penalty (adjusted for limits) \$8,911

# Economic Benefit Worksheet

**Respondent** Johns Manville  
**Case ID No.** 40226  
**Reg. Ent. Reference No.** RN100213719  
**Media** Industrial and Hazardous Waste  
**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
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No commas or \$

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$500	9-Dec-2009	19-Jan-2010	0.11	\$3	n/a	\$3
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to implement procedures to prevent the dilution of baghouse waste and manage it as hazardous waste. The Date Required is the violation begin date. The Final Date is the date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$5,859	9-Dec-2009	19-Jan-2010	1.03	\$302	\$5,859	\$6,161
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided costs to dispose of the characteristically hazardous baghouse dust. The Date Required is the violation begin date. The Final Date is the date the Facility ceased comingling of waste.

Approx. Cost of Compliance

\$6,359

**TOTAL**

\$6,164

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601719065    Johns Manville    Classification: AVERAGE    Rating: 1.11  
 Regulated Entity: RN100213719    CLEBURNE PLANT    Classification: AVERAGE    Site Rating: 0.22

ID Number(s):		ACCOUNT NUMBER	
	AIR OPERATING PERMITS		JH00250
	AIR OPERATING PERMITS	PERMIT	1677
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD054385539
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	33650
	AIR NEW SOURCE PERMITS	REGISTRATION	91903
	AIR NEW SOURCE PERMITS	PERMIT	946A
	AIR NEW SOURCE PERMITS	REGISTRATION	25373
	AIR NEW SOURCE PERMITS	REGISTRATION	45676
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JH00250
	AIR NEW SOURCE PERMITS	REGISTRATION	52226
	AIR NEW SOURCE PERMITS	REGISTRATION	51910
	AIR NEW SOURCE PERMITS	REGISTRATION	51909
	AIR NEW SOURCE PERMITS	REGISTRATION	55281
	AIR NEW SOURCE PERMITS	AFS NUM	4825100004
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX1025
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX1025M1
	AIR NEW SOURCE PERMITS	REGISTRATION	78705
	AIR NEW SOURCE PERMITS	REGISTRATION	88627
	STORMWATER	PERMIT	TXR05M753
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	JH00250

Location: 200 W INDUSTRIAL BLVD, CLEBURNE, TX, 76033

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: August 17, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 17, 2005 to August 17, 2010

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

Name: Theresa Hagood Phone: (512) 239 - 2540

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	10/31/2005	(434377)
2	04/04/2006	(457975)
3	06/05/2006	(480125)
4	09/20/2006	(497705)

5 11/22/2006 (531637)  
6 12/06/2006 (517147)  
7 12/19/2006 (532931)  
8 01/03/2007 (533488)  
9 02/19/2007 (539830)  
10 04/26/2007 (554547)  
11 05/31/2007 (560058)  
12 06/28/2007 (564761)  
13 08/21/2007 (571887)  
14 08/29/2007 (567440)  
15 08/29/2007 (570368)  
16 08/30/2007 (566716)  
17 08/30/2007 (569879)  
18 10/04/2007 (594204)  
19 10/04/2007 (594275)  
20 10/25/2007 (597235)  
21 11/01/2007 (597404)  
22 12/18/2007 (610818)  
23 03/20/2008 (617755)  
24 05/13/2008 (609224)  
25 05/13/2008 (611622)  
26 05/21/2008 (618865)  
27 05/21/2008 (654811)  
28 05/21/2008 (654852)  
29 06/12/2008 (618880)  
30 06/12/2008 (654859)  
31 06/12/2008 (654860)  
32 06/12/2008 (656828)  
33 07/17/2008 (683149)  
34 07/17/2008 (683813)  
35 08/04/2008 (687500)  
36 08/05/2008 (687482)  
37 08/05/2008 (688473)  
38 08/05/2008 (688475)  
39 10/06/2008 (700507)  
40 01/09/2009 (705574)  
41 03/18/2009 (738042)  
42 04/30/2009 (737737)  
43 09/02/2009 (763252)  
44 01/20/2010 (785421)  
45 05/11/2010 (796129)  
46 06/28/2010 (801188)  
47 06/29/2010 (803784)

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

Date: 10/31/2005 (434377)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to conduct quarterly visible emissions observations.

Date: 06/04/2007 (560058)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter F 101.211(a)  
30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THC Chapter 382, SubChapter A 382.085(b)  
946A, Condition 5 PERMIT

Description: Failure to comply with opacity limits set forth under Special Condition 5 of Permit No. 946A.

Date: 06/29/2007 (564761)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter F 101.201(e)

30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THC Chapter 382, SubChapter D 382.085(b)  
Condition 5 PERMIT

Description: Failure to comply with the 20 percent opacity limit set forth under Special Condition 5 of Permit 946A during an excess opacity event that occurred on May 26, 2007. The opacity exceedance was the result of an event that could not meet affirmative defense because the initial notification was not submitted within 24 hours after discovery of the event, as required. A complete notification was submitted via STEERS at 1:40 p.m. on May 29, 2007.

Date: 08/20/2007 (571887)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)  
30 TAC Chapter 335, SubChapter A 335.6(c)(1)  
30 TAC Chapter 335, SubChapter A 335.6(c)(2)  
30 TAC Chapter 335, SubChapter A 335.6(c)(3)  
30 TAC Chapter 335, SubChapter A 335.6(c)(4)  
30 TAC Chapter 335, SubChapter A 335.6(c)(5)  
30 TAC Chapter 335, SubChapter A 335.6(c)(5)(A)  
30 TAC Chapter 335, SubChapter A 335.6(c)(5)(B)  
30 TAC Chapter 335, SubChapter A 335.6(c)(5)(C)  
30 TAC Chapter 335, SubChapter A 335.6(c)(5)(D)

Description: Failure to provide written notification for all waste management units.

Date: 06/29/2010 (801188)

CN601719065

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)  
5C THSC Chapter 382 382.003(3)  
5C THSC Chapter 382 382.085(b)

Description: Failure to comply with the maximum allowed Phenol emission rate, given in the Maximum Allowable Emission Rates Table attached to the permit [30 TAC 116.115(b)(2)(F)].

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  
JOHNS MANVILLE  
RN100213719**

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

**AGREED ORDER  
DOCKET NO. 2010-1352-IHW-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 Johns Manville ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 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 an insulation manufacturing plant at 200 West Industrial Boulevard in Cleburne, Johnson County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 1, 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 Eight Thousand Nine Hundred Eleven Dollars (\$8,911) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand One Hundred

A handwritten signature in the bottom right corner of the page, appearing to be "EDJ".

Twenty-Nine Dollars (\$7,129) of the administrative penalty and One Thousand Seven Hundred Eighty-Two Dollars (\$1,782) 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 procedures on January 19, 2010 to prevent the dilution of hazardous baghouse waste and ensure that it is managed and disposed of properly.
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 Facility, the Respondent is alleged to have failed to prevent the dilution of a restricted waste as a substitute for treatment, in violation of 30 TEX. ADMIN. CODE § 335.431 and 40 CODE OF FEDERAL REGULATIONS § 268.3(a), as documented during a record review conducted on April 15, 2010. Specifically, the baghouse dust which was characteristically hazardous for chromium was comingled with plant trash and disposed of as a class 2 waste.

## 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: Johns Manville, Docket No. 2010-1352-IHW-E" to:  
  

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. 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

6/10/2011  
\_\_\_\_\_  
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

DEC 2, 2010  
\_\_\_\_\_  
Date

ERIC R. DOBRANSKY  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Johns Manville

PLANT MANAGER  
\_\_\_\_\_  
Title

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