

Executive Summary – Enforcement Matter – Case No. 38434
Hamilton Oil, Inc.
RN102859717
Docket No. 2009-1561-AIR-E

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
AIR

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
U.S. Highways 277 and 90, on the east side of U.S. Highway 277, north of Del Rio, Val Verde County

Type of Operation:
portable rock crusher

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: April 15, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$2,700
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	N/A
Total Paid to General Revenue:	\$2,700
Total Due to General Revenue:	\$0
SEP Conditional Offset:	N/A
Name of SEP: N/A	

Compliance History Classifications:
Person/CN – High
Site/RN – High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): February 2, 2009
Complaint Information: Complaint alleged excessive dust coming from the site.
Date(s) of Investigation: February 16, 2009; July 29, 2010
Date(s) of NOV(s): N/A
Date(s) of NOE(s): August 28, 2009

Violation Information

1. Failed to notify the TCEQ of an excess opacity event within 24 hours of the discovery of the event [30 TEX. ADMIN. CODE §101.201(e) and TEX. HEALTH & SAFETY CODE §382.085(b)].
2. Failed to maintain emissions control equipment in good condition, and by permitting opacity to exceed 30% over a six-minute period [30 TEX ADMIN. CODE § 106.4(c), § 111.111(a)(8)(A) and TEX. HEALTH & SAFETY CODE §382.085(b)].
3. Failed to employ water and/or chemicals to control dust emissions from all in-plant haul roads [PBR Registration No. 1632D, 30 TEX ADMIN. CODE §106.142(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Within 30 days:
 - a. Provide plant personnel with additional oversight and training designed to ensure opacity event reporting;
 - b. Improve operational procedures designed to ensure opacity limits are not exceeded;
 - c. Provide dust control measures for the plant's roads; and
 - d. Provide operational emissions control equipment at all belt transfer points, shaker screens, and the inlet and outlet of the crusher.
2. Within 45 days, submit written certification to demonstrate compliance:

Litigation Information

Date Petition(s) Filed: March 3, 2010
Date Answer(s) Filed: March 8, 2010
SOAH Referral Date: April 30, 2010
Hearing Date(s):
Preliminary hearing: June 10, 2010 (waived)
Evidentiary hearing: September 23, 2010 (continued)
Settlement Date: March 22, 2011

Executive Summary – Enforcement Matter – Case No. 38434
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Docket No. 2009-1561-AIR-E

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Contact Information

TCEQ Attorneys: Jeffrey Huhn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Heather Podlipny, Air Enforcement Section, (512) 239-2603

TCEQ Regional Contact: Rose Luna-Pirtle, Laredo Regional Office, (956) 753-4052

Respondent: J. R. Hamilton, President, Hamilton Oil, Inc., 1908 North 1st Street, P.O. Box 516,
Carrizo Springs, Texas 78834

Respondent's Attorney: William W. Sommers, The Gardner Law Firm, 745 E. Mulberry, San
Antonio, Texas 78212-3167

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	31-Aug-2009	Screening	23-Sep-2009	EPA Due	
	PCW	13-Dec-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Hamilton Oil, Inc.
Reg. Ent. Ref. No.	RN102859717
Facility/Site Region	16-Laredo
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	38434	No. of Violations	3	
Docket No.	2009-1561-AIR-E	Order Type	1660	
Media Program(s)	Air	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Heather Podlipny	
		EC's Team	Enforcement Team 4	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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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.

Compliance History	-10.0% Enhancement	Subtotals 2, 3, & 7	-300
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Notes	The penalty was reduced by High Performer status.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$350	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,700
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$2,700
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,700
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$2,700
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Screening Date 23-Sep-2009

Docket No. 2009-1561-AIR-E

PCW

Respondent Hamilton Oil, Inc.

Policy Revision 2 (September 2002)

Case ID No. 38434

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102859717

Media [Statute] Air

Enf. Coordinator Heather Podlipny

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

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

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

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> **Compliance History Summary**

Compliance History Notes

The penalty was reduced by High Performer status.

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

Screening Date	23-Sep-2009	Docket No.	2009-1561-AIR-E	PCW
Respondent	Hamilton Oil, Inc.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	38434	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN102859717			
Media [Statute]	Air			
Enf. Coordinator	Heather Podlipny			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 101.201(e) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to notify the TCEQ of an excess opacity event, as documented during an investigation conducted on July 29, 2009. Specifically, the Respondent failed to provide notice to the TCEQ, within 24 hours of the event, of excess opacity that occurred on the date of the investigation.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential			
				Percent 0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 10%
Matrix Notes	The Respondent failed to comply with 100% of the rule.				
					Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events	1	Number of violation days	56	
<i>mark only one with an x</i>	daily			Violation Base Penalty \$1,000
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	x		
	One single event is recommended, based on the one missing report.			

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV		NOV to EDPRP/Settlement	
Extraordinary				
Ordinary				
N/A	x		(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.			
				Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount	\$67	Violation Final Penalty Total	\$900
This violation Final Assessed Penalty (adjusted for limits)		\$900	

Economic Benefit Worksheet

Respondent Hamilton Oil, Inc.
Case ID No. 38434
Reg. Ent. Reference No. RN102859717
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	\$2,000	30-Jul-2009	1-Apr-2010	0.67	\$67	n/a	\$67
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 provide additional oversight and training on opacity event reporting. The Date Required is the date the report was due, and the Final Date is the date the Respondent is expected to complete the training and provide for additional oversight.

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

\$67

Screening Date 23-Sep-2009 **Docket No.** 2009-1561-AIR-E **PCW**
Respondent Hamilton Oil, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 38434 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102859717
Media [Statute] Air
Enf. Coordinator Heather Podlipny

Violation Number 2
Rule Cite(s) Permit by Rule Registration No. 16320D, 30 Tex. Admin. Code §§ 106.4(c) and 111.111(a)(8)(A), and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to employ required emissions control equipment and allowed excess opacity, as documented during an investigation conducted on July 29, 2009. Specifically, during the investigation, TCEQ staff observed that the Respondent did not have operational water sprays installed at all belt transfer points, shaker screens, nor the inlet and outlet of the crusher, and that visible emissions were being released from the Plant at an average opacity of 70.20% over a six minute period, while the rule limits opacity to 30%. Since the opacity was not reported within 24 hours of the event, and because the opacity could have been avoided by better operational practices and operational water sprays, the emissions do not meet the demonstrations in 30 Tex. Admin. Code § 101.222 and are not subject to an affirmative defense under 30 Tex. Admin. Code § 101.222(b)(1-11).
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment was exposed to insignificant amounts of pollutants not exceeding levels protective of human health or environmental receptors.
Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 1 Number of violation days
 mark only one with an x
 daily
 weekly
 monthly
 quarterly x
 semiannual
 annual
 single event
Violation Base Penalty \$1,000

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

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 \$1,000

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$142	Violation Final Penalty Total \$900
This violation Final Assessed Penalty (adjusted for limits) \$900	

Economic Benefit Worksheet

Respondent Hamilton Oil, Inc.
Case ID No. 38434
Reg. Ent. Reference No. RN102859717
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$3,000	29-Jul-2009	1-Apr-2010	0.67	\$7	\$135	\$142
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated costs to improve operational procedures and provide operational water spray bars in order to ensure opacity limits are not exceeded. The Date Required is the date of the opacity event, and the Final Date is the date the Respondent is expected to complete the corrective actions.

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	\$3,000	TOTAL	\$142
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Screening Date 23-Sep-2009 **Docket No.** 2009-1561-AIR-E **PCW**
Respondent Hamilton Oil, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 38434 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102859717
Media [Statute] Air
Enf. Coordinator Heather Podlipny

Violation Number 3
Rule Cite(s) Permit by Rule Registration No. 16320D, 30 Tex. Admin. Code §106.142(2), and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to control dust emissions from Plant roads, as documented during an investigation conducted on July 29, 2009. Specifically, during the investigation, TCEQ staff observed truck traffic generating significant amounts of dust from the Plant's roads, while the Respondent is required to employ water and/or chemicals to control dust emissions from all in-plant haul roads.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>>Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment was exposed to insignificant amounts of pollutants not exceeding levels protective of human health or environmental receptors.

Adjustment \$9,000
 \$1,000

Violation Events

Number of Violation Events 1 1 Number of violation days
 mark only one with an x
 daily
 weekly
 monthly
 quarterly x
 semiannual
 annual
 single event
Violation Base Penalty \$1,000
 One quarterly event is recommended, based on the date of investigation.

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 \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$142 **Violation Final Penalty Total** \$900
This violation Final Assessed Penalty (adjusted for limits) \$900

Economic Benefit Worksheet

Respondent Hamilton Oil, Inc.
Case ID No. 38434
Reg. Ent. Reference No. RN102859717
Media Air
Violation No. 3

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	\$3,000	29-Jul-2009	1-Apr-2010	0.67	\$7	\$135	\$142
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to provide dust control measures. The Date Required is the date of the investigation, and the Final Date is the date the Respondent is expected to provide the control measures.

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

\$3,000

TOTAL

\$142

Compliance History Report

Customer/Respondent/Owner-Operator: CN601448046 Hamilton Oil, Inc. Classification: HIGH Rating: 0.00
Regulated Entity: RN102859717 PLANT 530 Classification: HIGH Site Rating: 0.00
ID Number(s): AIR NEW SOURCE PERMITS PERMIT 16320D
AIR NEW SOURCE PERMITS ACCOUNT NUMBER 916320C
Location: PORTABLE: located two miles north of the intersection of U.S. Highways 277 and 90, on the east side of U.S. Highway 277, north of Del Rio in Val Verde County
TCEQ Region: REGION 16 - LAREDO
Date Compliance History Prepared: September 17, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 17, 2004 to September 17, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Terry Murphy Phone: (512) 239-5025

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 08/28/2009 (767701)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
HAMILTON OIL, INC.;
RN102859717**

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§
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§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2009-1561-AIR-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 Hamilton Oil, Inc. ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by William Sommers of the Gardner Law Firm, appear before the Commission and together stipulate that:

1. Respondent owns and operates a portable rock crusher located two miles north of the intersection of U.S. Highways 277 and 90, on the east side of U.S. Highway 277, north of Del Rio in Val Verde County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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. HEALTH & SAFETY CODE ch. 382 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 two thousand seven hundred dollars (\$2,700.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid two thousand seven hundred dollars (\$2,700.00) 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 July 29, 2009, a TCEQ Laredo Regional Office investigator documented that Respondent violated:
 - a. 30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to notify the TCEQ of an excess opacity event within 24 hours of the discovery of the event.
 - b. Permit by Rule Registration No. 16320D, 30 TEX. ADMIN. CODE §§ 106.4(c) and 111.111(a)(8)(A), and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain emissions control equipment in good condition, and by permitting opacity to exceed 30% over a six-minute period. Specifically, Respondent did not have operational water sprays installed at all belt transfer points, shaker screens, or the inlet and outlet of the crusher, and visible emissions were being released from the Plant at an average opacity of 70.20% over a six minute period. Since the excess opacity event was not reported within 24 hours of the event, and because the opacity could have been avoided by better operational practices and operational water sprays, the emissions do not meet the demonstrations in 30 TEX. ADMIN. CODE § 101.222 and are not subject to an affirmative defense under 30 TEX. ADMIN. CODE § 101.222(b)(1-11).
 - c. Permit by Rule Registration No. 16320D, 30 TEX. ADMIN. CODE § 106.142(2)¹, and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to employ water and/or chemicals to control dust emissions from all in-plant haul roads. Specifically, the investigator observed truck traffic generating significant amounts of dust from the Plant's roads.

¹ Pursuant to 30 TEX. ADMIN. CODE § 106.13, facilities previously authorized by the standard exemptions and exemptions from permitting under repealed portions 30 TEX. ADMIN. CODE ch. 106 continue to be authorized unless modifications or changes to those facilities has caused them to no longer meet the conditions of the former standard exemption or exemption from permitting and the general requirements of this subchapter.

2. Respondent received notice of the violations on or about September 2, 2009.

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 5, above. 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. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
 - i. Provide Plant personnel with additional oversight and training designed to ensure opacity event reporting (Allegation 1.a).
 - ii. Improve operational procedures designed to ensure opacity limits are not exceeded (Allegation 1.a).
 - iii. Provide dust control measures for the Plant's roads (Allegation 1.c.).
 - iv. Provide operational emissions control equipment at all belt transfer points, shaker screens, and the inlet and outlet of the crusher (Allegation 1.b.).
 - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and 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 shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

Air Section Manager
Texas Commission on Environmental Quality
Laredo Regional Office
707 East Calton Road, Suite 304
Laredo, Texas 78041-3887

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 Plant 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

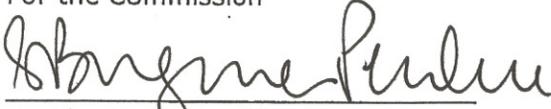
Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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.

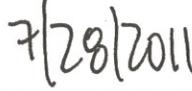
SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director



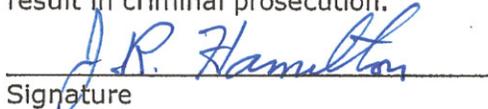
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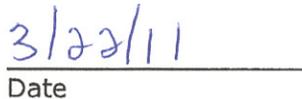
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Hamilton Oil, Inc., and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the 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


Date


Name (Printed or typed)
Authorized representative of
Hamilton Oil, Inc.

Title