Executive Summary – Enforcement Matter – Case No. 41478
Bar Constructors, Inc.
RN105598809
Docket No. 2011-0577-AIR-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
AIR
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
Trench Burner BARTB-1, 18015 County Road 329, Kaufman County
Type of Operation:
Trench burner
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: July 8, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $2,100
Amount Deferred for Expedited Settlement: $420
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $840
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $840
Name of SEP: North Central Texas Council of Governments - North Central Texas Clean School Bus Program
Compliance History Classifications:
Person/CN - Average
Site/RN - Average
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41478
Bar Constructors, Inc.
RN105598809
Docket No. 2011-0577-AIR-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: February 10, 2011
Date(s) of NOE(s): April 6, 2011

Violation Information

1. Failed to submit a Permit Compliance Certification ("PCC") within 30 days after the end of the certification period. Specifically, the Respondent did not submit the PCC for the certification period of September 19, 2009 through September 18, 2010 until February 28, 2011 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), General Operating Permit ("GOP") O-3089/Air Curtain Incinerator GOP No. 518 Terms and Conditions (b)(2), and TEX. HEALTH & SAFETY CODE § 382.085(b)].

2. Failed to submit a semi-annual deviation report within 30 days after the end of the reporting period. Specifically, the Respondent did not submit the semi-annual deviation report for the reporting period of September 19, 2009 through March 18, 2010 until February 28, 2011 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C), GOP O-3089/Air Curtain Incinerator GOP No. 518 Terms and Conditions (b)(2), and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that on February 28, 2011, the Respondent submitted the semi-annual deviation report and the PCC.

Technical Requirements:

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)

2. The Order will also require the Respondent to:

a. Within 30 days, implement measures and procedures designed to ensure that PCCs and semi-annual deviation reports are submitted; and

b. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Executive Summary – Enforcement Matter – Case No. 41478
Bar Constructors, Inc.
RN105598809
Docket No. 2011-0577-AIR-E

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732
Respondent: Mark Smith, Risk Management and Compliance, Bar Constructors, Inc., P.O. Box 10, Lancaster, Texas 75146
Respondent's Attorney: N/A

Attachment A
Docket Number: 2011-0577-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Bar Constructors, Inc.**
Penalty Amount:	**One Thousand Six Hundred Eighty Dollars ($1,680)**
SEP Offset Amount:	**Eight Hundred Forty Dollars ($840)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**North Central Texas Council of Governments**
Project Name:	**North Central Texas Clean School Bus Program**
Location of SEP:	**Collin, Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise Counties**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **North Central Texas Council of Governments** for the *North Central Texas Clean School Bus Program*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to provide reimbursement to schools, school districts, or school bus operators that retrofit, repower, or replace older school buses with newer model year buses or cleaner technology. Retrofitting, in this context, means installing devices to reduce exhaust emissions that are verified or certified by the U.S. Environmental Protection Agency (EPA) or the California Air Resources Board (CARB) as proven retrofit technologies. Repowering, in this context, means replacing older engines with newer, cleaner engines but keeping the same vehicle body. All replacement engines must be certified or verified by the EPA or CARB.

Buses replaced with the SEP Offset Amount must be buses that are not budgeted for replacement within the next twelve months. Any buses that are replaced with new buses will no longer be driven, must be fully decommissioned, and may only be sold for scrap. The Third-Party Recipient shall provide proof of decommissioning to the TCEQ for each new bus purchased with SEP Funds.

The Third-Party Recipient shall conduct a competitive call for projects that will be open to schools, school districts, and school bus operators in the 16-county NCTCOG service area. Scoring will be based on several key criteria including emissions reductions, cost-effectiveness, operation area(s), and vehicle usage.

This is an air pollution reduction program designed to reduce ozone formation and particulate matter emissions, directly impacting the health of school children traveling on buses. The primary emissions focus will be on reductions of nitrogen oxides (NO_x) with a secondary focus on particulate matter and other toxics associated with diesel emissions.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

B. Environmental Benefit

The Project will directly benefit air quality by reducing exhaust emissions which contribute to the formation of ozone. In addition to containing the ozone precursors NO_x and hydrocarbon, as well as particulate matter and carbon monoxide, diesel exhaust is known to cause or exacerbate a number of respiratory diseases, including asthma.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

North Central Texas Council of Governments
Attention: Amanda Brimmer, Senior Transportation Planner
PO Box 5888
Arlington, Texas 76005-5888

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
PO Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
PO Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES						
Assigned	4-Apr-2011					
PCW	19-Apr-2011	**Screening**	18-Apr-2011	**EPA Due**		

RESPONDENT/FACILITY INFORMATION

Respondent	Bar Constructors, Inc.		
Reg. Ent. Ref. No.	RN105598809		
Facility/Site Region	4-Dallas/Fort Worth	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	41478	**No. of Violations**	2
Docket No.	2011-0577-AIR-E	**Order Type**	1660
Media Program(s)	Air	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Samuel Short
		EC's Team	Enforcement Team 3

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: **$2,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — **5.0%** Enhancement — *Subtotals 2, 3, & 7*: **$100**

Notes: Enhancement for one NOV for the same/similar violation within the last five years.

Culpability No — **0.0%** Enhancement — *Subtotal 4*: **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5*: **$0**

Economic Benefit — **0.0%** Enhancement* — *Subtotal 6*: **$0**

Total EB Amounts $62
Approx. Cost of Compliance $1,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: **$2,100**

OTHER FACTORS AS JUSTICE MAY REQUIRE — **0.0%** — *Adjustment*: **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount: **$2,100**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: **$2,100**

DEFERRAL — **20.0%** Reduction — *Adjustment*: **-$420**

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY: **$1,680**

Screening Date 18-Apr-2011 **Docket No.** 2011-0577-AIR-E **PCW**

Respondent Bar Constructors, Inc.

Case ID No. 41478

Reg. Ent. Reference No. RN105598809

Media [Statute] Air

Enf. Coordinator Samuel Short

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

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 (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	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) 5%

>> 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 one NOV for the same/similar violation within the last five years.

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

Screening Date 18-Apr-2011 **Docket No.** 2011-0577-AIR-E **PCW**

Respondent Bar Constructors, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 41478 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105598809

Media [Statute] Air

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.146(2), General Operating Permit ("GOP") O-3089/Air Curtain Incinerator GOP No. 518 Terms and Conditions (b)(2), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit a Permit Compliance Certification ("PCC") within 30 days after the end of the certification period. Specifically, the Respondent did not submit the PCC for the certification period of September 19, 2009 through September 18, 2010 until February 28, 2011.

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: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 132 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on one late certification.

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

Estimated EB Amount $62

Statutory Limit Test

Violation Final Penalty Total $1,050

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

Economic Benefit Worksheet

Respondent Bar Constructors, Inc.
Case ID No. 41478
Req. Ent. Reference No. RN105598809
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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	$500	17-Apr-2010	19-Nov-2011	1.59	$40	n/a	$40
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)	$500	17-Apr-2010	28-Feb-2011	0.87	$22	n/a	$22
Notes for DELAYED costs	The estimated cost to implement measures and procedures to ensure compliance with the reporting requirements. Date required is the date the first report was due and the final date is the expected date of compliance. The estimated cost to timely submit the PCC and semi-annual deviation report. Date required is the date the first report was due and the final date is the date the reports were submitted.						
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 $1,000

TOTAL $62

Screening Date 18-Apr-2011 **Docket No.** 2011-0577-AIR-E **PCW**

Respondent Bar Constructors, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 41478 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105598809

Media [Statute] Air

Enf. Coordinator Samuel Short

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(C), GOP O-3089/Air Curtain Incinerator GOP No. 518 Terms and Conditions (b)(2), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit a semi-annual deviation report within 30 days after the end of the reporting period. Specifically, the Respondent did not submit the semi-annual deviation report for the reporting period of September 19, 2009 through March 18, 2010 until February 28, 2011.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 317 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on one late report.

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

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $1,050

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

Economic Benefit Worksheet

Respondent Bar Constructors, Inc.
Case ID No. 41478
Req. Ent. Reference No. RN105598809
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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)				0.00	$0	n/a	$0
Notes for DELAYED costs	See Economic Benefit under Violation No. 1.						
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 $0

TOTAL $0

Compliance History

Customer/Respondent/Owner-Operator:	CN600609283	Bar Constructors, Inc.	Classification: AVERAGE	Rating: 3.07
Regulated Entity:	RN105598809	TRENCH BURNER BARTB-1	Classification: AVERAGE	Site Rating: 1.50

ID Number(s):

AIR NEW SOURCE PERMITS	REGISTRATION	85803L001
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	960242P
AIR NEW SOURCE PERMITS	AFS NUM	4877701819
AIR OPERATING PERMITS	PERMIT	3089
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	960242P

Location: 18015 COUNTY ROAD 329 IN KAUFMAN COUNTY, TEXAS

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: April 13, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 13, 2006 to April 13, 2011

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

Name: Samuel Short Phone: (512) 239-5363

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: 9/1/2010 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.

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 08/04/2010 (842653)

2 04/01/2011 (895626)

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

Date: 08/05/2010 (842653) CN600609283

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
5C THSC Chapter 382 382.085(b)

Description: Failure to submit permit certification form within 30 days after compliance certification period ends.
This is a minor source and is being handled as Category B3 in accordance with the 'Enforcement Initiation Criteria for Air, Water and Waste Violations' ('EIC'), Revision 12.

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 BAR CONSTRUCTORS, INC. RN105598809	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-0577-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 Bar Constructors, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a trench burner at 18015 County Road 329 in Kaufman County, Texas (the "Site").

2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 11, 2011.

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 Two Thousand One Hundred Dollars ($2,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Hundred Forty Dollars ($840) of the

administrative penalty and Four Hundred Twenty Dollars ($420) 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. Eight Hundred Forty Dollars ($840) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

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 on February 28, 2011, the Respondent submitted the semi-annual deviation report and the Permit Compliance Certification ("PCC").

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 Site, the Respondent is alleged to have:

1. Failed to submit a PCC within 30 days after the end of the certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), General Operating Permit ("GOP") O-3089/Air Curtain Incinerator GOP No. 518 Terms and Conditions (b)(2), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on February 10, 2011. Specifically, the Respondent did not submit the PCC for the certification period of September 19, 2009 through September 18, 2010 until February 28, 2011.

2. Failed to submit a semi-annual deviation report within 30 days after the end of the reporting period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C), GOP O-3089/Air Curtain Incinerator GOP No. 518 Terms and Conditions (b)(2), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on February 10, 2011. Specifically, the Respondent did not submit the semi-annual deviation report for the reporting period of September 19, 2009 through March 18, 2010 until February 28, 2011.

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: Bar Constructors, Inc., Docket No. 2011-0577-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eight Hundred Forty Dollars ($840) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, implement measures and procedures designed to ensure that PCCs and semi-annual deviation reports are submitted in accordance with 30 TEX. ADMIN. CODE §§ 122.145 and 122.146; and

   b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Air Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. 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 Site operations referenced in this Agreed Order.

5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. 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.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ _____
For the Executive Director Date 7/31/2011

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, 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 Date 6-9-11

_____ _____
Name (Printed or typed) Title
Authorized Representative of
Bar Constructors, Inc.

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.

Attachment A
Docket Number: 2011-0577-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Bar Constructors, Inc.**
Penalty Amount:	**One Thousand Six Hundred Eighty Dollars ($1,680)**
SEP Offset Amount:	**Eight Hundred Forty Dollars ($840)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**North Central Texas Council of Governments**
Project Name:	**North Central Texas Clean School Bus Program**
Location of SEP:	**Collin, Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise Counties**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **North Central Texas Council of Governments** for the *North Central Texas Clean School Bus Program.* The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to provide reimbursement to schools, school districts, or school bus operators that retrofit, repower, or replace older school buses with newer model year buses or cleaner technology. Retrofitting, in this context, means installing devices to reduce exhaust emissions that are verified or certified by the U.S. Environmental Protection Agency (EPA) or the California Air Resources Board (CARB) as proven retrofit technologies. Repowering, in this context, means replacing older engines with newer, cleaner engines but keeping the same vehicle body. All replacement engines must be certified or verified by the EPA or CARB.

Buses replaced with the SEP Offset Amount must be buses that are not budgeted for replacement within the next twelve months. Any buses that are replaced with new buses will no longer be driven, must be fully decommissioned, and may only be sold for scrap. The Third-Party Recipient shall provide proof of decommissioning to the TCEQ for each new bus purchased with SEP Funds.

The Third-Party Recipient shall conduct a competitive call for projects that will be open to schools, school districts, and school bus operators in the 16-county NCTCOG service area. Scoring will be based on several key criteria including emissions reductions, cost-effectiveness, operation area(s), and vehicle usage.

This is an air pollution reduction program designed to reduce ozone formation and particulate matter emissions, directly impacting the health of school children traveling on buses. The primary emissions focus will be on reductions of nitrogen oxides (NO_x) with a secondary focus on particulate matter and other toxics associated with diesel emissions.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

B. Environmental Benefit

The Project will directly benefit air quality by reducing exhaust emissions which contribute to the formation of ozone. In addition to containing the ozone precursors NO_x and hydrocarbon, as well as particulate matter and carbon monoxide, diesel exhaust is known to cause or exacerbate a number of respiratory diseases, including asthma.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

North Central Texas Council of Governments
Attention: Amanda Brimmer, Senior Transportation Planner
PO Box 5888
Arlington, Texas 76005-5888

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
PO Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
PO Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.