

Executive Summary – Enforcement Matter – Case No. 42389
Explorer Pipeline Company
RN101954394
Docket No. 2011-1522-AIR-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Port Arthur Tank Farm, 6300 West Port Arthur Road, Port Arthur, Jefferson County

Type of Operation:

Petrochemical storage facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 23, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$149,248

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$149,248

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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Explorer Pipeline Company
RN101954394
Docket No. 2011-1522-AIR-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: April 25, 2011 through May 2, 2011

Date(s) of NOE(s): August 12, 2011

Violation Information

1. Failed to timely submit the initial notification and final record for an emissions event [30 TEX. ADMIN. CODE §§ 101.201(a), 101.201(b) and 122.143(4), Federal Operating Permit (“FOP”) No. O2780, Special Terms and Conditions No. 2.F., and TEX. HEALTH & SAFETY CODE § 382.085(b)].

2. Failed to prevent unauthorized emissions during an emissions event. Because the initial notification and final record for the event were not submitted timely and the event could have been foreseen and avoided, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE §§ 116.115(c), 116.115(b)(2)(F) and 122.143(4), New Source Review Permit No. 36100, Special Conditions No. 1, FOP No. O2780, Special Terms and Conditions No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that:

- a. On February 2, 2011, the Respondent cleaned and degassed Tank 122 and began work to complete mechanical repairs and the installation of new roof seals; and
- b. By March 1, 2011, the Respondent completed additional training with appropriate plant personnel on the TCEQ initial reporting and recordkeeping requirements to prevent the recurrence of an emissions event due to the same cause as Incident No. 150394. Additionally, a new employee was added on June 27, 2011, to monitor the tanks and work with external consultants to ensure reports are submitted in a timely manner.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, implement measures and procedures in order to prevent recurrence of an emissions event due to the same cause as Incident No. 150394; and
- b. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A

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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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Trina Grieco, Enforcement Division,
Enforcement Team 4, R-13, (210) 403-4006; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: James Sieck, Health, Safety, Security, and Environmental Manager,
Explorer Pipeline Company, 6300 West Port Arthur Road, Port Arthur, Texas 77640
R. E. Sands, President/CEO, Explorer Pipeline Company, 6300 West Port Arthur Road,
Port Arthur, Texas 77640
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Aug-2011	Screening	26-Aug-2011	EPA Due	8-May-2012
	PCW	26-Aug-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Explorer Pipeline Company
Reg. Ent. Ref. No.	RN101954394
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION		No. of Violations	2
Enf./Case ID No.	42389	Order Type	Findings
Docket No.	2011-1522-AIR-E	Government/Non-Profit	No
Media Program(s)	Air	Enf. Coordinator	Trina Grieco
Multi-Media		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** **\$100,200**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **49.0%** Enhancement **Subtotals 2, 3, & 7** **\$49,098**

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

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** **\$50**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$186**
Approx. Cost of Compliance **\$3,000**
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$149,248**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$149,248**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$149,248**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

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

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$149,248**

Screening Date 26-Aug-2011

Docket No. 2011-1522-AIR-E

PCW

Respondent Explorer Pipeline Company

Policy Revision 2 (September 2002)

Case ID No. 42389

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101954394

Media [Statute] Air

Enf. Coordinator Trina Grieco

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>)	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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) 49%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

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

Total Adjustment Percentage (Subtotals 2, 3, & 7) 49%

Screening Date 26-Aug-2011

Docket No. 2011-1522-AIR-E

PCW

Respondent Explorer Pipeline Company

Policy Revision 2 (September 2002)

Case ID No. 42389

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101954394

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.201(a), 101.201(b) and 122.143(4), Federal Operating Permit ("FOP") No. O2780, Special Terms and Conditions No. 2.F., and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to timely submit the initial notification and final record for an emissions event for Incident No. 150394. Specifically, the incident occurred during the period of April 12, 2010 through January 31, 2011. The initial notification was due within 24 hours after the discovery of the emissions event, February 1, 2011, but was not submitted until February 7, 2011. The final record was submitted on March 15, 2011, more than two weeks after the end of the emissions event.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
			x	1%

Matrix Notes Less than 30% of the rule requirement was not met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 2 Number of violation days 146

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$200

Two single events are recommended for the two reports.

Good Faith Efforts to Comply

25.0% Reduction \$50

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

Notes The Respondent returned to compliance on June 27, 2011 and the Notice of Enforcement is dated August 12, 2011.

Violation Subtotal \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$30

Violation Final Penalty Total \$248

This violation Final Assessed Penalty (adjusted for limits) \$248

Economic Benefit Worksheet

Respondent Explorer Pipeline Company
Case ID No. 42389
Reg. Ent. Reference No. RN101954394
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	\$1,500	1-Feb-2011	27-Jun-2011	0.40	\$30	n/a	\$30
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 cost to submit the initial notification and final emissions event record in a timely manner. Date Required is the date the initial notification was due and 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$30

Screening Date 26-Aug-2011

Docket No. 2011-1522-AIR-E

PCW

Respondent Explorer Pipeline Company

Policy Revision 2 (September 2002)

Case ID No. 42389

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101954394

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 116.115(c), 116.115(b)(2)(F) and 122.143(4), New Source Review Permit No. 36100, Special Conditions No. 1, and FOP No. O2780, Special Terms and Conditions No. 8, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent unauthorized emissions during an emissions event. Specifically the Respondent released 48,750 pounds ("lbs") of volatile organic compounds, 439 lbs of benzene, 634 lbs of toluene, 49 lbs of ethylbenzene, 244 lbs of xylene, and 780 lbs of hexane from Tank 122 [Emission Point No. T-122] into the atmosphere during the 7,054 hour event from April 12, 2010 through January 31, 2011 (Incident No. 150394). The event occurred due to a closed underground manifold valve leaking past the seals allowing gasoline to enter the tank. Because the initial notification and final record for the event were not submitted timely and the event could have been foreseen and avoided, the Respondent is precluded from asserting an affirmative defense under 30 Tex. Admin Code § 101.222.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 100%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$0

\$10,000

Violation Events

Number of Violation Events 10

295 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$100,000

Ten monthly events are recommended for the period from the beginning of the event (April 12, 2010) to the end of the event (February 1, 2011).

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 good faith criteria for this violation.

Violation Subtotal \$100,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$156

Violation Final Penalty Total \$149,000

This violation Final Assessed Penalty (adjusted for limits) \$149,000

Economic Benefit Worksheet

Respondent Explorer Pipeline Company
Case ID No. 42389
Reg. Ent. Reference No. RN101954394
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
<small>No commas or \$</small>							

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)	\$1,500	12-Apr-2010	8-May-2012	2.07	\$156	n/a	\$156

Notes for DELAYED costs

Estimated cost to implement measures and procedures to prevent a recurrence of similar events. The Date Required is the start date of the emissions event and the Final Date is the estimated 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$156

Compliance History

Customer/Respondent/Owner-Operator:	CN600424584 Explorer Pipeline Company	Classification: AVERAGE	Rating: 2.01
Regulated Entity:	RN101954394 PORT ARTHUR TANK FARM	Classification: AVERAGE	Site Rating: 2.18
ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	36100
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JE0160R
	AIR NEW SOURCE PERMITS	AFS NUM	4824500172
	WASTEWATER	PERMIT	WQ0002399000
	WASTEWATER	EPA ID	TX0116891
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	31746
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD058260340
	ON SITE SEWAGE FACILITY	PERMIT	1230065
	AIR OPERATING PERMITS	ACCOUNT NUMBER	JJ0160R
	AIR OPERATING PERMITS	PERMIT	2780
	AIR OPERATING PERMITS	ACCOUNT NUMBER	JE0160R
	WASTE WATER GENERAL PERMIT	PERMIT	TXG670177
	POLLUTION PREVENTION PLANNING	ID NUMBER	P00229
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	31746
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	JE0160R
Location:	6300 W PORT ARTHUR RD, PORT ARTHUR, TX, 77640		
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	August 16, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 16, 2006 to August 16, 2011		

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

Name: Todd Huddleson Phone: (512) 239 - 2541

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.

Effective Date: 10/25/2007 ADMINORDER 2007-0503-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(A)
 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(B)
 30 TAC Chapter 101, SubChapter F 101.201(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: O-2780, General Terms and Conditions OP
 O-2780, Special Condition 2(F) OP

Description: Failure to properly report an emissions event and submit a final report no later than two weeks after the end of the emission event.

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)

5C THC Chapter 382, SubChapter D 382.085(b)
Rqmt Prov: NSR Permit 36100, Special Condition 1 PERMIT
O-2780, General Terms and Conditions OP
O-2780, Special Condition 12A OP

Description: Failure to maintain an emission rate below the allowable emission limits and to properly operate a floating roof storage tank.

Effective Date: 12/04/2008

ADMINORDER 2008-1073-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.146(2)
5C THSC Chapter 382 382.085(b)

Rqmt Prov: O-02780 General Terms and Conditions OP

Description: Failure to submit an Annual Compliance Certification in a timely manner.

EIC A12i7 MOD(2)(B)

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	08/28/2006	(489955)
2	09/27/2006	(528140)
3	09/27/2006	(528141)
4	01/30/2007	(532603)
5	01/03/2007	(535349)
6	02/20/2007	(551644)
7	10/26/2006	(551645)
8	11/21/2006	(551646)
9	12/04/2006	(551647)
10	01/18/2007	(551648)
11	06/20/2007	(558185)
12	03/09/2007	(588738)
13	04/02/2007	(588739)
14	05/16/2007	(588740)
15	06/01/2007	(588741)
16	07/12/2007	(588742)
17	08/23/2007	(605574)
18	09/17/2007	(605575)
19	10/22/2007	(605576)
20	11/01/2007	(630452)
21	12/31/2007	(630453)
22	01/25/2008	(630454)
23	02/20/2008	(677026)
24	04/21/2008	(677027)
25	04/04/2008	(677028)
26	06/23/2008	(680160)
27	06/27/2008	(682125)
28	05/01/2008	(695654)
29	06/10/2008	(695655)
30	07/03/2008	(695656)
31	08/18/2008	(717200)

32 10/03/2008 (717201)
 33 10/03/2008 (717202)
 34 01/02/2009 (732574)
 35 01/02/2009 (732575)
 36 03/11/2009 (735716)
 37 02/05/2009 (755861)
 38 03/12/2009 (755862)
 39 12/16/2008 (755863)
 40 06/02/2009 (772857)
 41 06/02/2009 (772858)
 42 06/02/2009 (772859)
 43 03/19/2010 (794503)
 44 02/17/2010 (818727)
 45 07/24/2009 (818728)
 46 08/25/2009 (818729)
 47 09/22/2009 (818730)
 48 10/26/2009 (818731)
 49 11/23/2009 (818732)
 50 12/23/2009 (818733)
 51 01/19/2010 (818734)
 52 03/16/2010 (835806)
 53 04/08/2010 (835807)
 54 05/24/2010 (835808)
 55 08/09/2010 (843908)
 56 06/17/2010 (847788)
 57 07/22/2010 (862191)
 58 08/12/2010 (868789)
 59 09/30/2010 (875663)
 60 10/18/2010 (883214)
 61 11/18/2010 (889628)
 62 12/14/2010 (897994)
 63 01/20/2011 (903894)
 64 02/18/2011 (910784)
 65 08/12/2011 (915386)
 66 04/19/2011 (918042)
 67 04/19/2011 (930170)
 68 08/05/2011 (937327)
 69 05/19/2011 (939749)
 70 08/08/2011 (941167)
 71 08/01/2011 (947166)

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

Date: 08/29/2006 (489955) CN600424584
 Self Report? NO Classification: Moderate
 Citation: 2399 OT, No 5, pg 12 PERMIT
 30 TAC Chapter 319, SubChapter A 319.1
 Description: Failure by Explorer Pipeline to submit the results of total aluminum testing in accordance
 with the Other Requirements section of the permit.
 Date: 01/31/2007 (551644) CN600424584
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 06/21/2007 (558185)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
 30 TAC Chapter 122, SubChapter B 122.146(2)
 5C THC Chapter 382, SubChapter D 382.085(b)
 O-02780 General Terms and Conditions OP
 Description: Failure to submit an Annual Compliance Certification (ACC) in a timely manner.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
 30 TAC Chapter 122, SubChapter B 122.145(2)(C)
 5C THC Chapter 382, SubChapter D 382.085(b)
 O-02780 General Terms and Conditions OP
 Description: Failure to submit a semiannual deviation report in a timely manner.

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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
EXPLORER PIPELINE COMPANY	§	
RN101954394	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2011-1522-AIR-E

At its _____ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Explorer Pipeline Company (“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 presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a petrochemical storage facility at 6300 West Port Arthur Road in Port Arthur, Jefferson County, Texas (the “Plant”).
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During an investigation conducted from April 25, 2011 through May 2, 2011, TCEQ staff documented that the Respondent failed to timely submit the initial notification and final record for a reportable emissions event for Incident No. 150394. Specifically, the incident occurred during the period of April 12, 2010 through January 31, 2011. The initial notification was due within 24 hours after the discovery of the emissions event, February 1, 2011, but was not submitted until February 7, 2011. The final record was submitted on March 15, 2011, more than two weeks after the end of the emissions event.
4. During an investigation conducted from April 25, 2011 through May 2, 2011, TCEQ staff documented the failure to prevent unauthorized emissions during an emissions event. Specifically, the Respondent released approximately 48,750 pounds ("lbs") of volatile organic compounds, 439 lbs of benzene, 634 lbs of toluene, 49 lbs of ethylbenzene, 244 lbs of xylene, and 780 lbs of hexane from Tank 122 [Emission Point No. T-122] into the atmosphere during the 7,054 hour event from April 12, 2010 through January 31, 2011 (Incident No. 150394). The event occurred due to a closed underground manifold valve leaking past the seals allowing gasoline to enter the tank. The Respondent did not timely submit the initial notification and final record for the event and the TCEQ determined that the event could have been foreseen and avoided.
5. The Respondent received notice of the violations on August 18, 2011.
6. The Executive Director recognizes that:
 - a. On February 2, 2011, the Respondent cleaned and degassed Tank 122 and began work to complete mechanical repairs and the installation of new roof seals; and
 - b. By March 1, 2011, the Respondent completed additional training with appropriate plant personnel on the TCEQ initial reporting and recordkeeping requirements to prevent the recurrence of an emissions event due to the same cause as Incident No. 150394. Additionally, a new employee was added on June 27, 2011, to monitor the tanks and work with external consultants to ensure reports are submitted in a timely manner.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to timely submit the initial notification and final record for an emissions event, in violation of 30 TEX. ADMIN. CODE §§ 101.201(a), 101.201(b) and 122.143(4), Federal Operating Permit ("FOP") No. O2780, Special Terms and Conditions No. 2.F., and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to prevent unauthorized emissions during an emissions event, in violation of 30 TEX. ADMIN. CODE §§ 116.115(c), 116.115(b)(2)(F) and 122.143(4), New Source Review Permit No. 36100, Special Conditions No. 1, FOP No. O2780, Special Terms and Conditions No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b). Because the initial notification and final record for the event were not submitted timely and the event could have been foreseen and avoided, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222.

4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of One Hundred Forty-Nine Thousand Two Hundred Forty-Eight Dollars (\$149,248) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the One Hundred Forty-Nine Thousand Two Hundred Forty-Eight Dollar (\$149,248) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of One Hundred Forty-Nine Thousand Two Hundred Forty-Eight Dollars (\$149,248) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Explorer Pipeline Company, Docket No. 2011-1522-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 undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement measures and procedures in order to prevent recurrence of an emissions event due to the same cause as Incident No. 150394; 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. 2.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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1830

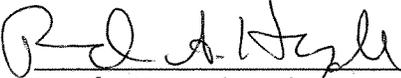
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any 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.
5. 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.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.

9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

1/17/12

Date

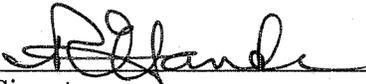
I, the undersigned, have read and understand the attached Agreed Order in the matter of Explorer Pipeline Company. I am authorized to agree to the attached Agreed Order on behalf of Explorer Pipeline Company, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Explorer Pipeline Company waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

11/8/11

Date

R.E. Sands

Name (Printed or typed)
Authorized Representative of
Explorer Pipeline Company

President / CEO

Title

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