

Executive Summary – Enforcement Matter – Case No. 42607
Baytown Energy Center, LLC
RN100226067
Docket No. 2011-1747-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Baytown Energy Center, 8605 Farm-to-Market Road 1405, Chambers County

Type of Operation:

Natural-gas fired cogeneration power plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: February 10, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$36,025

Amount Deferred for Expedited Settlement: \$7,205

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$14,410

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$14,410

Name of SEP: Barbers Hill Independent School District-Alternative Fueled Vehicle and Equipment Program

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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Baytown Energy Center, LLC
RN100226067
Docket No. 2011-1747-AIR-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: March 21, 2011
Date(s) of NOE(s): August 31, 2011

Violation Information

Failed to operate within the permitted concentration limits for nitrogen oxides (“NOx”) and ammonia from the combined-cycle turbine unit exhaust stacks: Emission Point Numbers (“EPNs”) CTG1, CTG2 and CTG3. Specifically, during the reporting period from August 5, 2009 to August 4, 2010, the Respondent exceeded the 3-hour rolling average concentration of 3.5 parts per million, volumetric dry (“ppmvd”) for NOx 78 times, and exceeded the 10 ppmvd 1-hour rolling average limit for ammonia 108 times [30 TEX. ADMIN. CODE §§ 101.20(3), 116.115(c), 117.310(c)(2)(A) and 122.143(4), Federal Operating Permit No. O2133, Special Terms and Conditions No. 6, Air Permit Nos. 41996, PSD-TX-953, and N-020, Special Conditions Nos. 5 and 8, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By April 14, 2011, the Respondent completed the installation of new pilot nozzles and combustor baskets on the combined-cycle turbine unit stacks: EPNs CTG1, CTG2, and CTG3.

Technical Requirements:

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

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: Nadia Hameed, Enforcement Division, Enforcement Team 5, MC R-12, (713) 767-3629; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

Executive Summary – Enforcement Matter – Case No. 42607
Baytown Energy Center, LLC
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Docket No. 2011-1747-AIR-E

Respondent: W. Thaddeus Miller, Chief Legal Officer/Corps. Secretary, Baytown Energy Center, LLC, 717 Texas Avenue, Suite 1000, Houston, Texas 77002
Jan Stavinoha, P.E., Environmental Manager - Central Power Region, Baytown Energy Center, LLC, 717 Texas Avenue, Suite 1000, Houston, Texas 77002

Respondent's Attorney: N/A

Attachment A
Docket Number: 2011-1747-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Baytown Energy Center, LLC

Payable Penalty Amount: Twenty-Eight Thousand Eight Hundred Twenty Dollars (\$28,820)

SEP Amount: Fourteen Thousand Four Hundred Ten Dollars (\$14,410)

Type of SEP: Pre-approved

Third-Party Recipient: Barbers Hill Independent School District-Alternative Fueled Vehicle and Equipment Program

Location of SEP: Chambers County

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

1. Project Description

A. Project

The Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to **Barbers Hill Independent School District** for the **Alternative Fueled Vehicle and Equipment Program** as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to retire current diesel-powered or gasoline powered vehicles and equipment and replace those vehicles and equipment with alternative-fueled vehicles and equipment; convert current vehicles and equipment to alternative-fueled equipment; or retrofit current gasoline or diesel-powered equipment.

SEP funds will only be used for the incremental costs of purchase of clean fuel or lower-emission vehicles or retrofit of existing vehicles and for the purchase of these cleaner burning fuels.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing air pollution emissions of particulate matter, volatile organic compounds, nitrogen oxides, and other pollutants associated with the combustion of fuel that would have been generated by older vehicles.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP 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, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

John Johnson
Carl Griffith & Associates, Inc.
2901 Turtle Creek Drive, Suite 101
Port Arthur, Texas 77642

3. Records and Reporting

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

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

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

Baytown Energy Center, LLC
Agreed Order - Attachment A

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the 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

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the 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 identified in this Agreed Order has not been, and shall not be, included as an SEP for the 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	6-Sep-2011	Screening	19-Sep-2011	EPA Due	
	PCW	26-Sep-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Baytown Energy Center, LLC
Reg. Ent. Ref. No.	RN100226067
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	42607	No. of Violations	1
Docket No.	2011-1747-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Nadia Hameed
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$27,500
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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	6.0% Enhancement	Subtotals 2, 3, & 7	\$1,650
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Notes: Enhancement for two NOV's with same/similar violations and one NOV with dissimilar violations. Reduction for one Notice of Intent to conduct an audit and for participation in a voluntary pollution reduction program.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$6,875
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Economic Benefit	50.0% Enhancement*	Subtotal 6	\$13,750
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Total EB Amounts \$226,128
 Approx. Cost of Compliance \$2,019,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$36,025
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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

Final Penalty Amount	\$36,025
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$36,025
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DEFERRAL	20.0% Reduction	Adjustment	-\$7,205
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$28,820
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Screening Date 19-Sep-2011

Docket No. 2011-1747-AIR-E

PCW

Respondent Baytown Energy Center, LLC

Policy Revision 2 (September 2002)

Case ID No. 42607

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100226067

Media [Statute] Air

Enf. Coordinator Nadia Hameed

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	2	10%
	Other written NOVs	1	2%
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>)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	Yes	-5%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 6%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for two NOVs with same/similar violations and one NOV with dissimilar violations. Reduction for one Notice of Intent to conduct an audit and for participation in a voluntary pollution reduction program.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 6%

Screening Date 19-Sep-2011

Docket No. 2011-1747-AIR-E

PCW

Respondent Baytown Energy Center, LLC

Policy Revision 2 (September 2002)

Case ID No. 42607

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100226067

Media [Statute] Air

Enf. Coordinator Nadia Hameed

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.20(3), 116.115(c), 117.310(c)(2)(A) and 122.143(4), Federal Operating Permit No. O2133, Special Terms and Conditions No. 6, Air Permit Nos. 41996, PSD-TX-953 and N-020, Special Conditions Nos. 5 and 8, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to operate within the permitted concentration limits for nitrogen oxides ("NOx") and ammonia from the combined-cycle turbine unit exhaust stacks, Emission Point Numbers CTG1, CTG2 and CTG3. Specifically, during the reporting period from August 5, 2009 to August 4, 2010, the Respondent exceeded the 3-hour rolling average concentration of 3.5 parts per million, volumetric dry ("ppmvd") for NOx 78 times, and exceeded the 10 ppmvd 1-hour rolling average limit for ammonia 108 times.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 11

93 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$27,500

Eleven quarterly events are recommended, four quarters each for CTG1 and CTG3 and three quarters for CTG2.

Good Faith Efforts to Comply

25.0% Reduction

\$6,875

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

Notes The Respondent completed the corrective actions on April 14, 2011, prior to the August 31, 2011 NOE.

Violation Subtotal \$20,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$226,128

Violation Final Penalty Total \$36,025

This violation Final Assessed Penalty (adjusted for limits) \$36,025

Economic Benefit Worksheet

Respondent Baytown Energy Center, LLC
Case ID No. 42607
Req. Ent. Reference No. RN100226067
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	\$2,019,000	7-Sep-2009	14-Apr-2011	1.60	\$10,768	\$215,360	\$226,128
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

Estimated expense to install new style pilot nozzles and combustor baskets on the stacks. The Date Required is the date of the first documented exceedance and the Final Date is the date the corrective actions were completed.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,019,000

TOTAL

\$226,128

Compliance History

Customer/Respondent/Owner-Operator: CN600376073 Baytown Energy Center, LLC Classification: AVERAGE Rating: 1.09

Regulated Entity: RN100226067 BAYTOWN ENERGY CENTER, Classification: AVERAGE Site Rating: 1.09

ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXR000043976

INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # (SWR) 86845

AIR OPERATING PERMITS ACCOUNT NUMBER CI0184T

AIR OPERATING PERMITS PERMIT 2133

AIR NEW SOURCE PERMITS REGISTRATION 93224

AIR NEW SOURCE PERMITS PERMIT 41996

AIR NEW SOURCE PERMITS REGISTRATION 49622

AIR NEW SOURCE PERMITS ACCOUNT NUMBER CI0184T

AIR NEW SOURCE PERMITS EPA ID PSDTX953

AIR NEW SOURCE PERMITS AFS NUM 4807100089

AIR EMISSIONS INVENTORY ACCOUNT NUMBER CI0184T

Location: 8605 Farm-Market Road 1405, Chambers County, Baytown, Texas 77523

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: September 19, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 19, 2006 to September 19, 2011

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

Name: Nadia Hameed Phone: 713-767-3629

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
Baytown Energy Center, LLC
3. If Yes, who is the current owner/operator?

	OWNOPR	Baytown Energy Center, LLC
	OPR	Calpine Operating Services Company, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s)?

	OPR	Calpine Central, L.P.
	OWNOPR	Baytown Cogeneration LP
5. When did the change(s) in owner or operator occur?

	11/14/2006	OWNOPR Baytown Cogeneration LP
	12/12/2006	OPR Calpine Central, L.P.
6. Rating Date: 9/1/2011 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 01/18/2008 (611958)
- 2 03/24/2009 (721103)
- 3 05/22/2009 (746196)
- 4 01/05/2010 (779209)
- 5 12/22/2009 (780049)
- 6 02/11/2010 (781193)
- 7 05/20/2010 (801685)
- 8 05/20/2010 (801760)
- 9 08/31/2011 (879374)
- 10 04/08/2011 (900051)

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

Date: 03/27/2009 (721103)CN600376073
Self Report? NO **Classification:** Minor
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
Special Condition 16A PERMIT
Special Condition 6 OP
Description: Failure to perform all required CGA tests. The required CGA tests were not conducted on unit CTG-1 during the third quarter of 2007 and on unit CTG-2 during the first quarter of 2008. This constitutes a violation of NSR Permit No. 41996 SC 16.A which requires the permit holder to "ensure that the CEMS meets the applicable quality-assurance requirements specified in 40 CFR Part 60, Appendix F, Procedure1, or an acceptable alternative."
Self Report? NO **Classification:** Minor
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.145(2)(A)
5C THSC Chapter 382 382.085(b)
General Terms and Conditions OP
Description: Failure to include a deviation in the 8/5/07-2/4/08 deviation report. Specifically, the emission event reported through STEERS on August 8, 2007 involving the spill of FM 200 (1,1,1,2,3,3,3-heptafluoropropane) was not reported on the deviation report. This constitutes a violation of 30 TAC 122.145(2)(A) which requires the permit holder to submit written reports of all deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken.

Date: 02/12/2010 (781193) CN600376073
Self Report? NO **Classification:** Minor
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
FOP O-02133 Special Term & Condition 6 OP
NSR Permit 41996 Special Condition 8 PERMIT
Description: Failure to keep ammonia concentrations below the permitted limit. (CATEGORY B18 Violation)
Self Report? NO **Classification:** Minor
Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
FOP O-02133 Special Term & Condition 6 OP
NSR Permit 41996 Special Condition 5 PERMIT
Description: Failure to keep NOx concentrations below the permitted limit. (CATEGORY B18 Violation)
Self Report? NO **Classification:** Minor
Citation: 30 TAC Chapter 117, SubChapter B 117.340(c)(1)(C)

30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THSC Chapter 382 382.085(b)
 FOP O-02133 Special Term & Condition 6 OP
 NSR Permit 41996 Special Condition 16 PERMIT

Description: Failure to maintain the CEMS unit. (CATEGORY B18 Violation)

Date: 08/31/2011 (879374) CN600376073

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THSC Chapter 382 382.085(b)
 Special Condition 1 PERMIT
 Special Terms and Conditions 6 OP

Description: Failure to meet the MAERT limits for NOx, NH3, and CO.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THSC Chapter 382 382.085(b)
 Special Condition 16 PERMIT
 Special Terms and Conditions 6 OP

Description: Failure to maintain CEMS unit.

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 THSC Chapter 382 382.085(b)
 Special Terms and Conditions 8 OP

Description: Failure to submit permit compliance certification within 30 days of the end of the certification period.

F. Environmental audits.

Notice of Intent Date: 06/25/2008 (685896)

No DOV Associated

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.

Type	Tier	Certification Date
CLEAN TEXAS PROGRAM	PARTNERSHIP	04/13/2009
CLEAN TEXAS PROGRAM	PARTNER	04/13/2009
CLEAN TEXAS PROGRAM	PARTNER	04/13/2009

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BAYTOWN ENERGY CENTER,
LLC
RN100226067

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

AGREED ORDER
DOCKET NO. 2011-1747-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 Baytown Energy Center, LLC ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a natural-gas fired cogeneration power plant located at 8605 Farm-to-Market Road 1405 in Chambers County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 5, 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 Thirty-Six Thousand Twenty-Five Dollars (\$36,025) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Fourteen Thousand Four Hundred Ten Dollars (\$14,410) of the administrative penalty and Seven Thousand Two Hundred Five Dollars (\$7,205) 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. Fourteen Thousand Four Hundred Ten Dollars (\$14,410) 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 by April 14, 2011, the Respondent completed the installation of new pilot nozzles and combustor baskets on the combined-cycle turbine unit stacks: Emission Point Numbers ("EPNs") CTG1, CTG2, and CTG3.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to operate within the permitted concentration limits for nitrogen oxides ("NOx") and ammonia from the combined-cycle turbine unit exhaust stacks: EPNs CTG1, CTG2 and CTG3, in violation of 30 TEX. ADMIN. CODE §§ 101.20(3), 116.115(c), 117.310(c)(2)(A) and 122.143(4), Federal Operating Permit No. O2133, Special Terms and Conditions No. 6, Air Permit Nos. 41996, PSD-TX-953, and N-020, Special Conditions Nos. 5 and 8, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 21, 2011. Specifically, during the reporting period from August 5, 2009 to August 4, 2010, the Respondent exceeded the 3-hour rolling average concentration of 3.5 parts per million, volumetric dry ("ppmv") for NOx 78 times, and exceeded the 10 ppmvd 1-hour rolling average limit for ammonia 108 times.

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: Baytown Energy Center, LLC, Docket No. 2011-1747-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, Fourteen Thousand Four Hundred Ten Dollars (\$14,410) 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. 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.

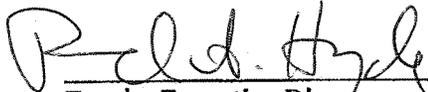
The determination of what constitutes good cause rests solely with the Executive Director.

6. 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.
7. 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.
8. 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

2/22/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date

W. Thaddaus Miller

Name (Printed or typed) 
Authorized Representative of
Baytown Energy Center, LLC

Chief Legal Officer / Corp. Sec.
Title

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

Attachment A
Docket Number: 2011-1747-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Baytown Energy Center, LLC
Payable Penalty Amount:	Twenty-Eight Thousand Eight Hundred Twenty Dollars (\$28,820)
SEP Amount:	Fourteen Thousand Four Hundred Ten Dollars (\$14,410)
Type of SEP:	Pre-approved
Third-Party Recipient:	Barbers Hill Independent School District- Alternative Fueled Vehicle and Equipment Program
Location of SEP:	Chambers County

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

1. Project Description

A. Project

The Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to **Barbers Hill Independent School District** for the **Alternative Fueled Vehicle and Equipment Program** as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to retire current diesel-powered or gasoline powered vehicles and equipment and replace those vehicles and equipment with alternative-fueled vehicles and equipment; convert current vehicles and equipment to alternative-fueled equipment; or retrofit current gasoline or diesel-powered equipment.

SEP funds will only be used for the incremental costs of purchase of clean fuel or lower-emission vehicles or retrofit of existing vehicles and for the purchase of these cleaner burning fuels.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by reducing air pollution emissions of particulate matter, volatile organic compounds, nitrogen oxides, and other pollutants associated with the combustion of fuel that would have been generated by older vehicles.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP 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, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

John Johnson
Carl Griffith & Associates, Inc.
2901 Turtle Creek Drive, Suite 101
Port Arthur, Texas 77642

3. Records and Reporting

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

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

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

Baytown Energy Center, LLC
Agreed Order - Attachment A

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the 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

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the 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 identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.