

Executive Summary – Enforcement Matter – Case No. 41876

W.T. Byler Co., Inc.

RN105623466

Docket No. 2011-0995-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Portable Trench Burner Serial No. 24684, at the intersection of Penn City Road and Jacintoport Boulevard, Channelview, Harris County

Type of Operation:

Portable air curtain incinerator (“ACI”)

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 2, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,672

Amount Deferred for Expedited Settlement: \$1,734

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$218

Total Due to General Revenue: \$6,720

Payment Plan: 35 payments of \$192 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41876

W.T. Byler Co., Inc.

RN105623466

Docket No. 2011-0995-AIR-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: February 1, 2011

Date(s) of NOE(s): May 21, 2011

Violation Information

1. Failed to submit semi-annual deviation reports for the November 14, 2008 through May 14, 2009 and the May 15, 2009 through November 13, 2009 reporting periods when violations were known to have occurred [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), Federal Operating Permit (“FOP”) O-3105/General Operating Permit (“GOP”) No. 518, Terms and Conditions (b)(3)(C)(ii)(c), and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to perform quarterly visible emissions observations. Specifically, the Respondent failed to perform visible emissions observations on the ACI at least once during each calendar quarter unless the source is not in operation during any portion of the calendar quarter [30 TEX. ADMIN. CODE § 122.143(4), FOP O-3105/GOP No. 518, Terms and Conditions (b)(10)(B)(i), and TEX. HEALTH & SAFETY CODE § 382.085(b)].
3. Failed to certify an annual permit compliance certification (“PCC”). Specifically, the Respondent did not certify the PCC submitted for the November 14, 2008 through November 13, 2009 reporting period [30 TEX. ADMIN. CODE §§ 122.146(1), 122.143(4), and 122.165(a)(8), FOP O-3105/GOP No. 518, Terms and Conditions (b)(3)(D)(i), and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days:
 - i. Implement procedures designed to ensure that semi-annual deviation reports and PCCs are submitted timely and accurately; and
 - ii. Implement procedures to ensure the quarterly visible emissions observations are performed as required by FOP O-3105/GOP No. 518.
- b. Within 45 days, submit written certification demonstrating compliance.

**Executive Summary – Enforcement Matter – Case No. 41876
W.T. Byler Co., Inc.
RN105623466
Docket No. 2011-0995-AIR-E**

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: James Nolan, Enforcement Division,
Enforcement Team 4, MC 149, (512) 239-6634; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Geoffrey Pospisil, Director of Safety and Risk Management, W.T. Byler
Co., Inc., 15203 Lillja Road, Houston, Texas 77060
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned PCW	31-May-2011	Screening	8-Jun-2011	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	W.T. Byler Co., Inc.
Reg. Ent. Ref. No.	RN105623466
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41876	No. of Violations	3
Docket No.	2011-0995-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	James Nolan
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 4
Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,100
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$305
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Notes: Enhancement for one NOV with same/similar violations.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$2,390
Approx. Cost of Compliance	\$3,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,405
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OTHER FACTORS AS JUSTICE MAY REQUIRE	35.4%	Adjustment	\$2,267
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount	\$8,672
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,672
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,734
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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	\$6,938
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Screening Date 8-Jun-2011

Docket No. 2011-0995-AIR-E

PCW

Respondent W.T. Byler Co., Inc.

Policy Revision 2 (September 2002)

Case ID No. 41876

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105623466

Media [Statute] Air

Enf. Coordinator James Nolan

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

Adjustment Percentage (Subtotal 2) 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 with same/similar violations.

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

Screening Date 8-Jun-2011
Respondent W.T. Byler Co., Inc.
Case ID No. 41876

Docket No. 2011-0995-AIR-E

PCW

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

Reg. Ent. Reference No. RN105623466

Media [Statute] Air

Enf. Coordinator James Nolan

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(B), Federal Operating Permit ("FOP") O-3105/General Operating Permit ("GOP") No. 518, Terms and Conditions (b)(3)(C)(ii)(c), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit semi-annual deviation reports for the November 14, 2008 through May 14, 2009 and the May 15, 2009 through November 13, 2009 reporting periods when violations were known to have occurred, as documented during a record review conducted on February 1, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification			Percent
	Major	Moderate	Minor	
	x			10%
100% of the rule requirement was not met.				

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 724 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,000

Two single events are recommended, one for each report not submitted.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$68

Violation Final Penalty Total \$2,843

This violation Final Assessed Penalty (adjusted for limits) \$2,843

Economic Benefit Worksheet

Respondent W.T. Byler Co., Inc.
Case ID No. 41876
Reg. Ent. Reference No. RN105623466
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$500	13-Jun-2009	4-Mar-2012	2.73	\$68	n/a	\$68
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 implement procedures designed to ensure semi-annual deviation reports are complete, accurate, and submitted within 30 days after the end of each deviation reporting period. The Date Required is the date the first deviation report was due to be submitted. 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

\$500

TOTAL

\$68

Screening Date 8-Jun-2011

Docket No. 2011-0995-AIR-E

PCW

Respondent W.T. Byler Co., Inc.

Policy Revision 2 (September 2002)

Case ID No. 41876

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105623466

Media [Statute] Air

Enf. Coordinator James Nolan

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 122.143(4), FOP O-3105/GOP No. 518, Terms and Conditions (b)(10)(B)(i), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to perform quarterly visible emissions observations, as documented during a record review conducted on February 1, 2011. Specifically, the Respondent failed to perform visible emissions observations on the air curtain incinerator ("ACI") at least once during each calendar quarter unless the source is not in operation during any portion of the calendar quarter.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			x	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 8 640 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$4,000

Eight single events are recommended based on eight quarterly observations that were missed.

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 \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,304

Violation Final Penalty Total \$5,687

This violation Final Assessed Penalty (adjusted for limits) \$5,687

Economic Benefit Worksheet

Respondent W.T. Byler Co., Inc.
Case ID No. 41876
Reg. Ent. Reference No. RN105623466
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	31-Mar-2009	4-Mar-2012	2.93	\$37	n/a	\$37

Notes for DELAYED costs

Estimated cost to implement procedures to conduct quarterly observations as required by FOP O-3105/GOP No. 518. The Date Required is the date the first observation was due. The Final Date is the expected 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)	\$2,000	31-Mar-2009	31-Dec-2010	2.67	\$267	\$2,000	\$2,267

Notes for AVOIDED costs

Avoided costs for conducting quarterly observations (\$250 x 8). The Date Required is the date the first observation was due. The Final Date is the date the last observation was due for 2010.

Approx. Cost of Compliance

\$2,250

TOTAL

\$2,304

Screening Date 8-Jun-2011
Respondent W.T. Byler Co., Inc.
Case ID No. 41876

Docket No. 2011-0995-AIR-E

PCW

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

Reg. Ent. Reference No. RN105623466

Media [Statute] Air

Enf. Coordinator James Nolan

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 122.146(1), 122.143(4), and 122.165(a)(8), FOP O-3105/GOP No. 518, Terms and Conditions (b)(3)(D)(i), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to certify an annual permit compliance certification ("PCC"), as documented during a record review conducted on February 1, 2011. Specifically, the Respondent did not certify the PCC submitted for the November 14, 2008 through November 13, 2009 reporting period.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
			x	1%

Matrix Notes At least 70% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 250 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$100

One single event is recommended based on one inadequate report.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDRP/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 \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$18

Violation Final Penalty Total \$142

This violation Final Assessed Penalty (adjusted for limits) \$142

Economic Benefit Worksheet

Respondent W.T. Byler Co., Inc.
Case ID No. 41876
Reg. Ent. Reference No. RN105623466
Media Air
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	1-Oct-2010	4-Mar-2012	1.42	\$18	n/a	\$18

Notes for DELAYED costs

Estimated cost to provide additional Title V reporting oversight. The Date Required is the date the certified permit compliance certification was due. 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

\$250

TOTAL

\$18

Compliance History

Customer/Respondent/Owner-Operator:	CN603819293 W.T. Byler Co., Inc.	Classification: AVERAGE	Rating: 2.93
Regulated Entity:	RN105623466 PORTABLE TRENCH BURNER SERIAL NO 24684	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	AIR OPERATING PERMITS PERMIT	3105	
	AIR NEW SOURCE PERMITS ACCOUNT NUMBER	960239M	
	AIR NEW SOURCE PERMITS REGISTRATION	86202L001	
	AIR NEW SOURCE PERMITS AFS NUM	4877701816	
	AIR EMISSIONS INVENTORY ACCOUNT NUMBER	960239M	
Location:	LOCATED @ INTX OF PENN CITY RD & JACINTOPO RT BLVD IN CHANNELVIEW, TX. 77015		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	June 6, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 6, 2006 to June 6, 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.
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	09/08/2010	(779917)
2	04/15/2011	(866345)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	09/01/2010	(779917)	CN600579262
Self Report?	YES		Classification: Moderate
Citation:	30 TAC Chapter 106, SubChapter V 106.496(h)(4)(B) 5C THSC Chapter 382 382.085(b)		
Description:	Failure to maintain records to demonstrate compliance with permit-by-rule (PBR) requirements. (Category C3)		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 106, SubChapter V 106.496(h)(4)(D) 5C THSC Chapter 382 382.085(b)		
Description:	Failure to clearly and permanently mark the Regulated Entity (RN) number on the manifold or above-ground portion of an air curtain incinerator (ACI) unit. (Category B3)		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 122, SubChapter B 122.143(4)		

30 TAC Chapter 122, SubChapter B 122.146(1)
30 TAC Chapter 122, SubChapter B 122.146(2)
5C THSC Chapter 382 382.085(b)
FOP #O-3105, T&C (b)(3)(D)(ii) OP
Description: Failure to submit an annual Permit Compliance Certification (PCC) Form for the period of November 14, 2008 through November 14, 2009. (Category B3)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.145(2)(B)
5C THSC Chapter 382 382.085(b)
GOP #O-3105, T&C (b)(3)(C)(ii)(c) OP

Description: Failure to submit semi-annual deviation reports for the period November 14, 2008 to May 14, 2009 and for the period May 15, 2009 to November 13, 2009. (Category B3)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
5C THSC Chapter 382 382.085(b)
GOP #O-3105, T&C (b)(10)(B)(i) OP

Description: Failure to perform quarterly visible emissions observations. (Category B1)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
40 CFR Chapter 62, SubChapter C, PT 62, SubPT III 62.14820(b)
5C THSC Chapter 382 382.085(b)
GOP#3105 T&C(b)(14)(B)(ii) OP

Description: Failure to conduct an initial opacity test on an air curtain incinerator (ACI) prior to January 2, 2005. (Category B1)

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
W.T. BYLER CO., INC.
RN105623466

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

AGREED ORDER
DOCKET NO. 2011-0995-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 W.T. Byler Co., 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 portable air curtain incinerator ("ACI") that was operated at the intersection of Penn City Road and Jacintoport Boulevard in Channelview, Harris 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 May 26, 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 Eight Thousand Six Hundred Seventy-Two Dollars (\$8,672) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Eighteen

Dollars (\$218) of the administrative penalty and One Thousand Seven Hundred Thirty-Four Dollars (\$1,734) 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.

The remaining amount of Six Thousand Seven Hundred Twenty Dollars (\$6,720) of the administrative penalty shall be payable in thirty-five monthly payments of One Hundred Ninety-Two Dollars (\$192) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 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.
10. 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.
11. 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 semi-annual deviation reports for the November 14, 2008 through May 14, 2009 and the May 15, 2009 through November 13, 2009 reporting periods when violations were known to have occurred, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), Federal Operating Permit ("FOP") O-3105/General Operating Permit ("GOP") No. 518, Terms and Conditions (b)(3)(C)(ii)(c), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review on February 1, 2011.

2. Failed to perform quarterly visible emissions observations, in violation of 30 TEX. ADMIN. CODE § 122.143(4), FOP O-3105/GOP No. 518, Terms and Conditions (b)(10)(B)(i), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review on February 1, 2011. Specifically, the Respondent failed to perform visible emissions observations on the ACI at least once during each calendar quarter unless the source is not in operation during any portion of the calendar quarter.
3. Failed to certify an annual permit compliance certification ("PCC"), in violation of 30 TEX. ADMIN. CODE §§ 122.146(1), 122.143(4), and 122.165(a)(8), FOP O-3105/GOP No. 518, Terms and Conditions (b)(3)(D)(i), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review on February 1, 2011. Specifically, the Respondent did not certify the PCC submitted for the November 14, 2008 through November 13, 2009 reporting period.

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: W.T. Byler Co., Inc., Docket No. 2011-0995-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. 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:
 - i. Implement procedures designed to ensure that semi-annual deviation reports and PCCs are submitted timely and accurately; and
 - ii. Implement procedures to ensure the quarterly visible emissions observations are performed as required by FOP O-3105/GOP No. 518.
 - 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 Nos. 2.a.i. and 2.a.ii. 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
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

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 Site 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

Tom Dawkins
For the Executive Director

3/14/13
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.

Peggy King
Signature

October 13, 2011
Date

Geoff Pospisil
Name (Printed or typed)
Authorized Representative of the
W.T. Byler Co., Inc.

Director of Safety & Risk
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.