

Executive Summary – Enforcement Matter – Case No. 46751
DuraTherm, Inc.
RN100890235
Docket No. 2013-0848-IHW-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

IHW

Small Business:

No

Location(s) Where Violation(s) Occurred:

DuraTherm, 2700 Avenue S, San Leon, Galveston County

Type of Operation:

Hazardous waste processing and 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: October 25, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$53,537

Amount Deferred for Expedited Settlement: \$10,707

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$21,415

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$21,415

Name of SEP: Texas Association of Resource Conservation and Development Areas, Inc.

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002 and September 2011

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: February 5, 2013

Date(s) of NOE(s): April 19, 2013

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Violation Information

1. Failed to update the Facility's Notice of Registration ("NOR"). Specifically, waste code 0004206H should be removed as a waste managed in waste management unit ("WMU") no. 067, the incorrect WMUs were indicated for waste codes 0042003H and 0917114H, and waste streams that are no longer generated were not inactivated [30 TEX. ADMIN. CODE § 335.6(c) and industrial and hazardous waste ("IHW") Permit No. 50355, Permit Provision ("PP") II.C.1.h.].
2. Failed to follow the inspection schedule contained in the Facility's IHW permit. Specifically, the daily permitted miscellaneous units (the two thermal desorbers) inspection was not conducted on November 14, 2011, and October 27, 2011; the daily permitted tanks inspection was not conducted on November 24, 2011; the daily permitted container storage area no. 2 inspection was not conducted on October 26, 2011; and the daily security inspection was not conducted on October 26, 2011 [30 TEX. ADMIN. CODE § 335.152(a)(1), 40 CODE OF FEDERAL REGULATIONS ("CFR") § 264.15, and IHW Permit No. 50355, PP III.D.].
3. Failed to prevent the acceptance and management of unauthorized waste at the Facility. Specifically, wastes with Texas Form Codes 119, 203, 207, 209, 305, 307, 316, 319, 389, 403, 404, 409, 491, 493, 503, 504, 512, 513, 519, 597, 602, 606, 609, and 695, which are not authorized by the Facility's permit, were received and managed at the Facility between January 1, 2010 and December 31, 2012 [30 TEX. ADMIN. CODE § 335.2(a), 40 CFR § 270.1(c), and IHW Permit No. 50355, PPs IV.B.1., V.B.1., V.C.1., and V.K.].
4. Failed to prevent the disposal of hazardous waste at an unauthorized facility. Specifically, twelve cubic yards of hazardous waste with a Toxicity Characteristic Leaching Procedure ("TCLP") concentration of 6.74 milligrams per liter ("mg/l") for arsenic (EPA hazardous waste no. D004) was manifested by Respondent as a Class 1 waste and disposed on October 19, 2012 at an unauthorized facility [30 TEX. ADMIN. CODE § 335.2(b) and IHW Permit No. 50355, PP II.C.1.h.].
5. Failed to designate the correct waste code on a hazardous waste manifest. Specifically, waste code 00863191, a Class 1 waste, was designated on hazardous waste manifest tracking no. 005228040; however, analytical results of a sample of this waste indicate it is a hazardous waste with a TCLP concentration of 6.74 mg/l for arsenic (EPA hazardous waste no. D004) [30 TEX. ADMIN. CODE § 335.10(c) and IHW Permit No. 50355, PP II.C.1.h.].
6. Failed to indicate a weight discrepancy on a hazardous waste manifest. Specifically, manifests with tracking nos. 005523979JJK, 007841125JJK, 007841126JJK, and 002517155FLE had weight discrepancies; however, the discrepancy information was not marked in the discrepancy information space (box 18.a) on these manifests [30 TEX.

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ADMIN. CODE § 335.12(a), 40 CFR § 264.71(a)(1) and IHW Permit No. 50355, PP II.C.1.h.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures:

- a. Updated the Facility's NOR by removing waste code 0004206H as a waste managed in WMU no. 067, correcting WMUs for waste codes 0042003H and 0917114H, and inactivating waste streams that are no longer generated on May 22, 2013;
- b. Conducted training for Facility personnel on inspection procedures required by the Facility permit on April 30, 2013;
- c. Corrected hazardous waste manifests with tracking nos. 005523979JJK, 007841125JJK, 007841126JJK, and 002517155FLE to indicate weight discrepancies on May 3, 2013;
- d. Corrected hazardous waste manifest with tracking no. 005228040 by designating the correct waste code on May 24, 2013; and
- e. Submitted a permit application to modify IHW Permit No. 50355 to include additional applicable waste form codes accepted and managed at the Facility on May 24, 2013.

Technical Requirements:

1. The Order will require Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)
2. The Order will also require Respondent to:
 - a. Immediately, cease disposal of hazardous waste at an unauthorized facility;
 - b. Within 30 days, develop and implement procedures to ensure wastes are identified with the correct waste codes on hazardous waste manifests and to ensure that waste is disposed at an authorized facility;
 - c. Within 90 days, cease accepting and managing waste with Texas Form Codes that are not authorized by the Facility's permit or obtain permit authorization for the unauthorized Texas Form Codes; and

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d. Within 105 days, submit written certification demonstrating compliance with Ordering Provisions a. through c.

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: Thomas Greimel, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-5690; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565
Respondent: Eric Gerstenberg, President, DuraTherm, Inc., 2700 Avenue S, San Leon, Texas 77539
Ana Woods, Compliance Manager, DuraTherm, Inc., 2700 Avenue S, San Leon, Texas 77539
Respondent's Attorney: N/A

Attachment A
Docket Number: 2013-0848-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	DuraTherm, Inc.
Penalty Amount:	Forty-Two Thousand Eight Hundred Thirty Dollars (\$42,830)
SEP Amount:	Twenty-One Thousand Four Hundred Fifteen Dollars (\$21,415)
Type of SEP:	Contribution to a Pre-Approved Third-Party Administrator
Third-Party Administrator:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Household Hazardous Waste Clean-Up
Location of SEP:	Galveston County; San Jacinto - Brazos Coastal River Basin; Gulf Coast Aquifer

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The 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

Respondent shall contribute the SEP amount to the Third-Party Administrator pursuant to the agreement between the Third-Party Administrator and the TCEQ. Specifically, the contribution will be used to provide local residents with a means of properly disposing household hazardous wastes such as paint, thinners, pesticides, oil and gas, corrosive cleaners, and fertilizers in one day collection events. SEP monies will be used to pay for the associated labor, materials, and disposal costs. Citizens will not be charged disposal fees. The project is administered in accordance with TCEQ guidance on household hazardous waste and in compliance with federal, state, and local environmental laws and regulations. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project.

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.

DuraTherm, Inc.
Agreed Order - Attachment A

b. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing a means of properly disposing household hazardous waste which might otherwise be disposed of in storm drains, the sewage system, or other means detrimental to the environment.

c. Minimum Expenditure

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

2. Performance Schedule

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

Texas Association of Resource Conservation and Development Areas, Inc.
Attention: Ken Awtrey
P.O. Box 635067
Nacogdoches, Texas 75961

3. Records and Reporting

Concurrent with the payment of the SEP amount, 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 Administrator. 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 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.

DuraTherm, Inc.
Agreed Order - Attachment A

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

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

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 Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned 22-Apr-2013	Screening 30-Apr-2013	EPA Due
	PCW 3-May-2013		

RESPONDENT/FACILITY INFORMATION

Respondent	DuraTherm, Inc.		
Reg. Ent. Ref. No.	RN100890235		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	46751	No. of Violations	1
Docket No.	2013-0848-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$30,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 9.0% Enhancement **Subtotals 2, 3, & 7** **\$2,700**

Notes Enhancement for one agreed order containing a denial of liability, and reduction due to high performer classification and one notice of Intent.

Culpability No 0.0% Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

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

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

<small>Total EB Amounts</small>	\$2,748	<small>*Capped at the Total EB \$ Amount</small>
<small>Approx. Cost of Compliance</small>	\$13,580	

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$32,700**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$32,700**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$32,700**

DEFERRAL 20.0% Reduction **Adjustment** **-\$6,540**

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 **\$26,160**

Screening Date 30-Apr-2013

Docket No. 2013-0848-IHW-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 2 (September 2002)

Case ID No. 46751

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

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>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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	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) 19%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one agreed order containing a denial of liability, and reduction due to high performer classification and one notice of intent.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 9%

Screening Date 30-Apr-2013

Docket No. 2013-0848-IHW-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 2 (September 2002)

Case ID No. 46751

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Grelmel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.2(a), 40 Code of Federal Regulations § 270.1(c), and IHW Permit No. 50355, PPs IV.B.1., V.B.1., V.C.1., and V.K.

Violation Description Failed to prevent the acceptance and management of unauthorized waste at the Facility. Specifically, wastes with Texas Form Codes 119, 203, 207, 209, 305, 307, 316, 319, 389, 403, 404, 409, 491, 493, 503, 504, 512, 513, 519, 597, 602, 606, 609, and 695, which are not authorized by the Facility's permit, were received and managed at the Facility between January 1, 2010 and December 31, 2012.

Base Penalty \$10,000

Environmental Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential		X		

Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would 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 12 Number of violation days 1095

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	biannual	
	annual	

Violation Base Penalty \$30,000

Twelve quarterly events are recommended for the period from January 1, 2010 to December 31, 2012.

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 \$30,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,748

Violation Final Penalty Total \$32,700

This violation Final Assessed Penalty (adjusted for limits) \$32,700

Economic Benefit Worksheet

Respondent: DuraTherm, Inc.
Case ID No.: 46751
Reg. Ent. Reference No.: RN100890235
Media Violation No.: 1
Industrial and Hazardous Waste

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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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		\$0
Record Keeping System				0.00	\$0		\$0
Training/Sampling				0.00	\$0		\$0
Remediation/Disposal				0.00	\$0		\$0
Permit Costs	\$13,580	1-Jan-2010	17-Jan-2014	4.05	\$2,748		\$2,748
Other (as needed)				0.00	\$0		\$0

Notes for DELAYED costs

Estimated cost to modify the Facility permit authorizing acceptance of additional waste types. The Date Required is the first date the Facility accepted unauthorized waste. 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
Personal				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

\$13,580

TOTAL

\$2,748

Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	22-Apr-2013			
	PCW	3-May-2013	Screening	30-Apr-2013	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	DuraTherm, Inc.
Reg. Ent. Ref. No.	RN100890235
Facility/Site Region	12-Houston
	Major/Minor Source
	Major

CASE INFORMATION	
Enf./Case ID No.	46751
Docket No.	2013-0848-IHW-E
Media Program(s)	Industrial and Hazardous Waste
Multi-Media	
	No. of Violations
	4
	Order Type
	1660
	Government/Non-Profit
	No
	Enf. Coordinator
	Thomas Greimel
	EC's Team
	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0
Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$13,750
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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	9.0% Enhancement		<i>Subtotals 2, 3, & 7</i>	\$1,237
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Notes: Enhancement for one agreed order containing a denial of liability, and reduction due to high performer classification and one notice of intent.

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

Good Faith Effort to Comply Total Adjustments		<i>Subtotal 5</i>	\$1,000
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Economic Benefit	0.0% Enhancement*		<i>Subtotal 6</i>	\$0
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Total EB Amounts: \$6,880
 Approx. Cost of Compliance: \$7,670
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$13,987
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OTHER FACTORS AS JUSTICE MAY REQUIRE	49.0%		<i>Adjustment</i>	\$6,850
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with violation nos. 2 and 3.

		<i>Final Penalty Amount</i>	\$20,837
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STATUTORY LIMIT ADJUSTMENT		<i>Final Assessed Penalty</i>	\$20,837
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DEFERRAL	20.0%		<i>Adjustment</i>	-\$4,167
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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	\$16,670
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Screening Date 30-Apr-2013

Docket No. 2013-0848-IHW-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 46751

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 19%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one agreed order containing a denial of liability, and reduction due to high performer classification and one notice of Intent.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 9%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 9%

Screening Date 30-Apr-2013
Respondent DuraTherm, Inc.
Case ID No. 46751
Reg. Ent. Reference No. RN100890235
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Thomas Grelmel
Violation Number 1

Docket No. 2013-0848-IHW-E

PCW

Policy Revision 3 (September 2011)
 PCW Revision August 3, 2011

Rule Cite(s) 30 Tex. Admin. Code § 335.6(c) and Industrial and Hazardous Waste ("IHW") Permit No. 50355, Permit Provision ("PP") II.C.1.h.

Violation Description Failed to update the Facility's Notice of Registration ("NOR"). Specifically, waste code 0004206H should be removed as a waste managed in waste management unit ("WMU") no. 067, the incorrect WMUs were indicated for waste codes 0042003H and 0917114H, and waste streams that are no longer generated were not inactivated.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
			X	1.0%

Matrix Notes

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

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semi-annually	
annually	
irregularly	X

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

10.0% reduction

\$25

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

Notes The Respondent came into compliance by May 22, 2013 after the Notice of Enforcement ("NOE") dated April 19, 2013.

Violation Subtotal \$225

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$369

This violation Final Assessed Penalty (adjusted for limits) \$369

Economic Benefit Worksheet

Respondent: DuraTherm, Inc.
Case ID No.: 46751
Reg. Ent. Reference No.: RN100890235
Media: Industrial and Hazardous Waste
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
<i>(No commas or %)</i>							

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	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)	\$500	5-Feb-2013	22-May-2013	0.29	\$7	\$0	\$7

Notes for DELAYED costs

Estimated cost to update the Facility's NOR. The Date Required is the Investigation date. 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

\$500

TOTAL

\$7

Screening Date 30-Apr-2013

Docket No. 2013-0848-IHW-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 46751

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Grämel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 335.152(a)(1), 40 Code of Federal Regulations ("CFR") § 264.15, and IHW Permit No. 50355, PP III.D.

Violation Description

Failed to follow the inspection schedule contained in the Facility's IHW permit. Specifically, the daily permitted miscellaneous units (the two thermal desorbers) inspection was not conducted on November 14, 2011, and October 27, 2011; the daily permitted tanks inspection was not conducted on November 24, 2011; the daily permitted container storage area no. 2 inspection was not conducted on October 26, 2011; and the daily security inspection was not conducted on October 26, 2011.

Base Penalty \$25,000

Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 7.0%

Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$23,250

\$1,750

Violation Events

Number of Violation Events 5

5 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semi-annual	
annual	
single event	X

Violation Base Penalty \$8,750

Five single events are recommended for each date and/or Facility unit for which inspections were not conducted in accordance with the Facility permit inspection schedule.

Good Faith Efforts to Comply

10.0% Reduction

\$875

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

Notes

The Respondent came into compliance by April 30, 2013 after the NOE dated April 19, 2013.

Violation Subtotal \$7,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$280

Violation Final Penalty Total \$12,905

This violation Final Assessed Penalty (adjusted for limits) \$12,905

Economic Benefit Worksheet

Respondent: DuraTherm, Inc.
Case ID No.: 46751
Reg. Ent. Reference No.: RN100890235
Media: Industrial and Hazardous Waste
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for DELAYED costs

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)	\$250	26-Oct-2011	30-Apr-2013	2.43	\$30	\$250	\$280

Notes for AVOIDED costs

Estimated avoided cost to conduct inspections in accordance with the Facility permit. The Date Required is the date of the first inspection which was not conducted. The Final Date is the compliance date.

Approx. Cost of Compliance

\$250

TOTAL

\$280

Screening Date 30-Apr-2013

Docket No. 2013-0848-IHW-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 46751

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Grelmel

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 335.2(b) and 335.10(c) and IHW Permit No. 50355, PP II.C.1.h.

Violation Description

Failed to prevent the disposal of hazardous waste at an unauthorized facility. Specifically, twelve cubic yards of hazardous waste with a Toxicity Characteristic Leaching Procedure ("TCLP") concentration of 6.74 milligrams per liter ("mg/l") for arsenic (EPA hazardous waste no. D004) was manifested by the Respondent as a Class 1 waste and disposed on October 19, 2012 at an unauthorized facility. Also, failed to designate the correct waste code on a hazardous waste manifest. Specifically, waste code 00863191, a Class 1 waste, was designated on hazardous waste manifest tracking no. 005228040; however, analytical results of a sample of this waste indicate it is a hazardous waste with a TCLP concentration of 6.74 mg/l for arsenic (EPA hazardous waste no. D004).

Base Penalty \$25,000

Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 15.0%

Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

Number of violation days 1

mark only one with an x

Daily	
Weekly	
Monthly	
Quarterly	
Semiannual	
Annual	
Single event	X

Violation Base Penalty \$3,750

One single event is recommended.

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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6,586

Violation Final Penalty Total \$6,089

This violation Final Assessed Penalty (adjusted for limits) \$6,089

Economic Benefit Worksheet

Respondent: DuraTherm, Inc.
Case ID No.: 46751
Reg. Ent. Reference No.: RN100890235
Media: Industrial and Hazardous Waste
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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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	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)	\$250	19-Oct-2012	17-Jan-2014	1.25	\$16	\$0	\$16

Notes for DELAYED costs

Estimated cost to complete training to ensure hazardous waste manifests are completed with the correct waste codes. The Date Required is the date of the manifest. 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]	\$6,570	19-Oct-2012	19-Oct-2012	0.00	\$0	\$6,570	\$6,570
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to dispose of the hazardous waste at an authorized facility. The Date Required is the date of the unauthorized disposal. The Final Date is the date of the unauthorized disposal.

Approx. Cost of Compliance

\$6,820

TOTAL

\$6,586

Screening Date 30-Apr-2013

Docket No. 2013-0848-IHW-E

PCW

Respondent DuraTherm, Inc.

Policy Revision 3 (September 2011)

Case ID No. 46751

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100890235

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Grelmel

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 335.12(a), 40 CFR § 264.71(a)(1) and IHW Permit No. 50355, PP ILC.1.h.

Violation Description

Failed to indicate a weight discrepancy on a hazardous waste manifest. Specifically, manifests with tracking nos. 005523979JJK, 007841125JJK, 007841126JJK, and 002517155FLE had weight discrepancies; however, the discrepancy information was not marked in the discrepancy information space (box 18.a) on these manifests.

Base Penalty \$25,000

Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

Programmatic Matrix

Falsification	Major	Moderate	Minor
			X

Percent 1.0%

Matrix Notes

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

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 4

4 Number of violation days

mark only one with an x

Daily	
Weekly	
Monthly	
Quarterly	
Biannual	
Annual	X

Violation Base Penalty \$1,000

Four single events are recommended (one for each of the four manifests).

Good Faith Efforts to Comply

10.0% (penalty)

\$100

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

Notes

The Respondent came into compliance by May 3, 2013 after the NOE dated April 19, 2013.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$1,475

This violation Final Assessed Penalty (adjusted for limits) \$1,475

Economic Benefit Worksheet

Respondent: DuraTherm, Inc.
Case ID No.: 46751
Reg. Ent. Reference No.: RN100890235
Media: Industrial and Hazardous Waste
Violation No.: 4

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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		\$0
Record Keeping System				0.00	\$0		\$0
Training/Sampling				0.00	\$0		\$0
Remediation/Disposal				0.00	\$0		\$0
Permit Costs				0.00	\$0		\$0
Other (as needed)	\$100	30-Dec-2011	3-May-2013	1.34	\$7		\$7

Notes for DELAYED costs

Estimated cost to make corrections to the discrepancy section on four hazardous waste manifests. The Date Required is the date of the earliest manifest. The Final Date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$100

TOTAL

\$7

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEO Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN603349820, RN100890235, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603349820, DuraTherm, Inc. **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN100890235, DURATHERM **Classification:** HIGH **Rating:** 0.00

Complexity Points: 20 **Repeat Violator:** NO

CH Group: 11 - Waste Management (Excluding Landfills)

Location: 2700 AVENUE S SAN LEON, TX 77539, GALVESTON COUNTY

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):

AIR NEW SOURCE PERMITS REGISTRATION 14291

AIR NEW SOURCE PERMITS AFS NUM 4816700042

AIR NEW SOURCE PERMITS REGISTRATION 85676

AIR NEW SOURCE PERMITS ACCOUNT NUMBER GB0101M

AIR NEW SOURCE PERMITS REGISTRATION 87443

INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXD981053770

INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE

REGISTRATION # (SWR) 34814

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0840217

INDUSTRIAL AND HAZARDOUS WASTE PERMIT 50355

WASTEWATER PERMIT WQ0004086000

WASTEWATER EPA ID TX0117757

AIR EMISSIONS INVENTORY ACCOUNT NUMBER GB0101M

POLLUTION PREVENTION PLANNING ID NUMBER P03840

USED OIL REGISTRATION A86130

USED OIL EPA ID TXD981053770

Compliance History Period: September 01, 2007 to August 31, 2012

Rating Year: 2012

Rating Date: 09/01/2012

Date Compliance History Report Prepared: June 20, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 20, 2008 to June 20, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Thomas Grelmel

Phone (512) 239-5690

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 09/29/2012 ADMINORDER 2012-0236-MLM-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.2(b)

Rqmt Prov:IV-A and IV-B PERMIT

Description: Failed to prevent the acceptance of a shipment of unauthorized hazardous waste at the Facility, in violation of 30 TEX. ADMIN. CODE § 335.2(b) and IHW Permit No. 50355, Provision Nos. IV-A and IV-B, as documented during an investigation conducted on September 29, 2011. Specifically, the Respondent accepted and processed a shipment of corrosive hazardous waste (hazardous waste code D002) that the Facility was not authorized to accept and process.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125
30 TAC Chapter 335, SubChapter F 335.152(a)(8)
40 CFR Chapter 264, SubChapter I, PT 264, SubPT J 264.193(e)(1)(iii)

Rqmt Prov:II-C-2-h PERMIT
V-B-3 PERMIT

Description: Failed to maintain secondary containment free of gaps and cracks,Specifically, secondary containment A for tanks PV-18 through PV-21 had a concrete coating crack about four feet long near PV-20. Secondary containment A-1 for tanks FPV-31, the containment wall indicated some erosion and the wall edge joining the concrete base had a gap of approximately two inches. Also, the secondary containment for container storage area ("CSA")-2 Roll-off area, NOR Unit 044, Permitted unit 01,

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter E 335.112(a)(21)
30 TAC Chapter 335, SubChapter F 335.152(a)(19)
40 CFR Chapter 264, SubChapter I, PT 264, SubPT CC 264.1089(b)
40 CFR Chapter 265, SubChapter I, PT 265, SubPT CC 265.1090(b)

Description: Failed to record inspections of the air emission control equipment, in violation of 30 TEX. ADMIN. CODE §§ 335.112(a)(21) and 335.152(a)(19) and 40 CFR §§ 264.1089(b) and 265.1090(b), as documented during an investigation conducted on September 29, 2011. Specifically, the Respondent did not maintain a record of the Subpart CC tank inspections for offactory odors and visual observations.

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter F 335.152(a)(4)
40 CFR Chapter 262, SubChapter I, PT 262, SubPT B 262.20

Rqmt Prov:II-C-1-h PERMIT

Description: Failed to use a new manifest for rejected wastes, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(4) and 40 CFR § 262.20 and IHW Permit No. 50355, Provision No. II-C-1-h, as documented during an investigation conducted on September 29, 2011. Specifically, waste manifests 005440020 JJK, 005373755 JJK, and 006442062 JJK were received and partially rejected, then sent back to generator without a new manifest

Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.12(2)
40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.51
40 CFR Chapter 279, SubChapter I, PT 279, SubPT E 279.73

Description: Failed to obtain a used oil registration and EPA ID. No. prior to conducting used oil activities, in violation of 30 TEX. ADMIN. CODE § 324.12(2) and 40 CFR §§ 279.51 and 279.73, as documented during an investigation conducted on September 29, 2011.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	June 06, 2011	(920873)
Item 2	December 12, 2012	(1051186)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

Notice of Intent Date: 08/30/2011 (952260)
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:

N/A

J. Early Compliance:

Sites Outside of Texas:

N/A

Published Compliance History Report for CN603349820, RN100890235, Rating Year 2012 which includes Compliance History (CH) components from June 20, 2008, through June 20, 2013.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DURATHERM, INC.
RN100890235**

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

**AGREED ORDER
DOCKET NO. 2013-0848-IHW-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding DuraTherm, Inc. ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent operates a hazardous waste processing and storage facility at 2700 Avenue S in San Leon, Galveston County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial solid and hazardous waste ("IHW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 24, 2013.
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 Fifty-Three Thousand Five Hundred Thirty-Seven Dollars (\$53,537) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twenty-One Thousand Four Hundred Fifteen Dollars (\$21,415) of the administrative penalty and Ten Thousand

Seven Hundred Seven Dollars (\$10,707) 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. Twenty-One Thousand Four Hundred Fifteen Dollars (\$21,415) 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 and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Updated the Facility's Notice of Registration ("NOR") by removing waste code 0004206H as a waste managed in waste management unit ("WMU") no. 067, correcting WMUs for waste codes 0042003H and 0917114H, and inactivating waste streams that are no longer generated on May 22, 2013;
 - b. Conducted training for Facility personnel on inspection procedures required by the Facility permit on April 30, 2013;
 - c. Corrected hazardous waste manifests with tracking nos. 005523979JJK, 007841125JJK, 007841126JJK, and 002517155FLE to indicate weight discrepancies on May 3, 2013;
 - d. Corrected hazardous waste manifest with tracking no. 005228040 by designating the correct waste code on May 24, 2013; and
 - e. Submitted a permit application to modify IHW Permit No. 50355 to include additional applicable waste form codes accepted and managed at the Facility on May 24, 2013.
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 operator of the Facility, the Respondent is alleged to have:

1. Failed to update the Facility's NOR, in violation of 30 TEX. ADMIN. CODE § 335.6(c) and IHW Permit No. 50355, Permit Provision ("PP") I.C.1.h., as documented during an investigation conducted on February 5, 2013. Specifically, waste code 0004206H should be removed as a waste managed in WMU no. 067, the incorrect WMUs were indicated for waste codes 0042003H and 0917114H, and waste streams that are no longer generated were not inactivated.
2. Failed to follow the inspection schedule contained in the Facility's IHW permit, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(1), 40 CODE OF FEDERAL REGULATIONS ("CFR") § 264.15, and IHW Permit No. 50355, PP III.D., as documented during an investigation conducted on February 5, 2013. Specifically, the daily permitted miscellaneous units (the two thermal desorbers) inspection was not conducted on November 14, 2011, and October 27, 2011; the daily permitted tanks inspection was not conducted on November 24, 2011; the daily permitted container storage area no. 2 inspection was not conducted on October 26, 2011; and the daily security inspection was not conducted on October 26, 2011.
3. Failed to prevent the acceptance and management of unauthorized waste at the Facility, in violation of 30 TEX. ADMIN. CODE § 335.2(a), 40 CFR § 270.1(c), and IHW Permit No. 50355, PPs IV.B.1., V.B.1., V.C.1., and V.K., as documented during an investigation conducted on February 5, 2013. Specifically, wastes with Texas Form Codes 119, 203, 207, 209, 305, 307, 316, 319, 389, 403, 404, 409, 491, 493, 503, 504, 512, 513, 519, 597, 602, 606, 609, and 695, which are not authorized by the Facility's permit, were received and managed at the Facility between January 1, 2010 and December 31, 2012.
4. Failed to prevent the disposal of hazardous waste at an unauthorized facility, in violation of 30 TEX. ADMIN. CODE § 335.2(b) and IHW Permit No. 50355, PP I.C.1.h., as documented during an investigation conducted on February 5, 2013. Specifically, twelve cubic yards of hazardous waste with a Toxicity Characteristic Leaching Procedure ("TCLP") concentration of 6.74 milligrams per liter ("mg/l") for arsenic (EPA hazardous waste no. D004) was manifested by the Respondent as a Class 1 waste and disposed on October 19, 2012 at an unauthorized facility.
5. Failed to designate the correct waste code on a hazardous waste manifest, in violation of 30 TEX. ADMIN. CODE § 335.10(c) and IHW Permit No. 50355, PP I.C.1.h., as documented during an investigation conducted on February 5, 2013. Specifically, waste code 00863191, a Class 1 waste, was designated on hazardous waste manifest tracking no. 005228040; however, analytical results of a sample of this waste indicate it is a hazardous waste with a TCLP concentration of 6.74 mg/l for arsenic (EPA hazardous waste no. D004).
6. Failed to indicate a weight discrepancy on a hazardous waste manifest, in violation of 30 TEX. ADMIN. CODE § 335.12(a), 40 CFR § 264.71(a)(1) and IHW Permit No. 50355, PP I.C.1.h., as documented during an investigation conducted on February 5, 2013.

Specifically, manifests with tracking nos. 005523979JJK, 007841125JJK, 007841126JJK, and 002517155FLE had weight discrepancies; however, the discrepancy information was not marked in the discrepancy information space (box 18.a) on these manifests.

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: DuraTherm, Inc., Docket No. 2013-0848-IHW-E" to:

Financial Administration Division, Revenue Operations 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 (Jurisdiction and Stipulations) above, Twenty-One Thousand Four Hundred Fifteen Dollars (\$21,415) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease disposal of hazardous waste at an unauthorized facility, in accordance with 30 TEX. ADMIN. CODE § 335.2(b) and IHW Permit No. 50355, PP II.C.1.h;
 - b. Within 30 days after the effective date of this Agreed Order, develop and implement procedures to ensure wastes are identified with the correct waste codes on hazardous waste manifests and to ensure that waste is disposed at an authorized facility, in accordance with 30 TEX. ADMIN. CODE §§ 335.2(b) and 335.10(c) and IHW Permit No. 50355, PPs II.C.1.h., IV.B.1., V.B.1., V.C.1., and V.K.;

- c. Within 90 days of the effective date of this Agreed Order, cease accepting and managing waste with Texas Form Codes that are not authorized by the Facility's permit, in accordance with 30 TEX. ADMIN. CODE § 335.2(a), 40 CFR § 270.1(c), and IHW Permit No. 50355, PPs IV.B.1., V.B.1., V.C.1., and V.K. or obtain permit authorization for the unauthorized Texas Form Codes; and
- d. Within 105 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. through 2.c. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

Industrial and Hazardous Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Draup Miller for Ramiro Garcia

For the Executive Director

1.9.14

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.

E. MA

Signature

8/29/13

Date

ERIC GERSTENBERG

Name (Printed or typed)
Authorized Representative of
DuraTherm, Inc.

PRESIDENT

Title

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

Attachment A
Docket Number: 2013-0848-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	DuraTherm, Inc.
Penalty Amount:	Forty-Two Thousand Eight Hundred Thirty Dollars (\$42,830)
SEP Amount:	Twenty-One Thousand Four Hundred Fifteen Dollars (\$21,415)
Type of SEP:	Contribution to a Pre-Approved Third-Party Administrator
Third-Party Administrator:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Household Hazardous Waste Clean-Up
Location of SEP:	Galveston County; San Jacinto - Brazos Coastal River Basin; Gulf Coast Aquifer

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The 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

Respondent shall contribute the SEP amount to the Third-Party Administrator pursuant to the agreement between the Third-Party Administrator and the TCEQ. Specifically, the contribution will be used to provide local residents with a means of properly disposing household hazardous wastes such as paint, thinners, pesticides, oil and gas, corrosive cleaners, and fertilizers in one day collection events. SEP monies will be used to pay for the associated labor, materials, and disposal costs. Citizens will not be charged disposal fees. The project is administered in accordance with TCEQ guidance on household hazardous waste and in compliance with federal, state, and local environmental laws and regulations. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project.

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.

DuraTherm, Inc.
Agreed Order - Attachment A

b. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing a means of properly disposing household hazardous waste which might otherwise be disposed of in storm drains, the sewage system, or other means detrimental to the environment.

c. Minimum Expenditure

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

2. Performance Schedule

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

Texas Association of Resource Conservation and Development Areas, Inc.
Attention: Ken Awtrey
P.O. Box 635067
Nacogdoches, Texas 75961

3. Records and Reporting

Concurrent with the payment of the SEP amount, 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 Administrator. 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 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.

DuraTherm, Inc.
Agreed Order - Attachment A

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

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

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 Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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

