

**Executive Summary – Enforcement Matter – Case No. 51495**  
**Smurfit Kappa Orange County LLC**  
**RN100754779**  
**Docket No. 2015-1659-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Smurfit Kappa Orange County Forney Mill, 855 East U.S. Highway 80, Forney,  
Kaufman County

**Type of Operation:**

Cardboard manufacturing plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 12, 2016

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$25,790

**Amount Deferred for Expedited Settlement:** \$5,158

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$20,632

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Supplemental Environmental Project ("SEP") Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** April 2014

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** July 9, 2015

**Date(s) of NOE(s):** September 1, 2015

**Executive Summary – Enforcement Matter – Case No. 51495**  
**Smurfit Kappa Orange County LLC**  
**RN100754779**  
**Docket No. 2015-1659-AIR-E**

***Violation Information***

1. Failed to comply with maximum emissions rate ("MER"). Specifically, the Respondent exceeded the nitrogen oxide ("NOx") MER of 2.4 pounds per hour ("lbs/hr") by approximately 0.76 lb/hr for NOx at the Combined Heat and Power ("CHP") Unit, Emission Point Number ("EPN") CHP, on 577 instances during the period from January 1, 2014 through June 15, 2015, resulting in the unauthorized release of approximately 438.52 lbs of NOx [30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 116.615(2), and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), Federal Operating Permit ("FOP") No. O2979, Special Terms & Conditions ("STC") No. 10, and Standard Permit Registration No. 77162].
2. Failed to re-certify the CHP Unit as recommended by the manufacturer's maintenance schedule. Specifically, the CHP Unit was due for re-certification on May 11, 2015, but the required re-certification was not conducted until August 7, 2015 [30 TEX. ADMIN. CODE § 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), FOP No. O2979, STC No. 10, and Standard Permit Registration No. 77162, General Requirements No. 4(G)].
3. Failed to report all instances of deviations. Specifically, the semi-annual deviation report for the December 3, 2014 through June 2, 2015 reporting period did not include a deviation for failing to re-certify the CHP Unit as recommended by the manufacturer's maintenance schedule [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A), TEX. HEALTH & SAFETY CODE § 382.085(b), and FOP No. O2979, General Terms and Conditions].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective measures:

- a. On August 7, 2015, re-certified the CHP Unit, EPN CHP; and
- b. On August 11, 2015, obtained a permit amendment for Standard Permit Registration No. 77162 to increase the NOx emissions rate for the CHP Unit, EPN CHP.

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days:
  - i. Submit a revised deviation report for the December 3, 2014 through June 2, 2015 reporting period that includes the deviation for failing to re-certify the CHP Unit as recommended by the manufacturer's maintenance schedule; and

**Executive Summary – Enforcement Matter – Case No. 51495  
Smurfit Kappa Orange County LLC  
RN100754779  
Docket No. 2015-1659-AIR-E**

- ii. Implement measures and/or procedures to ensure that all deviations are timely reported.
- b. Within 45 days, submit written certification to demonstrate compliance with a.

***Litigation Information***

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

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Amancio R. Gutierrez, Enforcement Division, Enforcement Team 5, MC 149, (512) 239-3921; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** David A. Nelson, Vice President of Paper Operations, 855 East U.S. Highway 80, Forney, Texas 75126  
Laura Ionita, Environmental Engineer, Smurfit Kappa Orange County LLC, 855 East U.S. Highway 80, Forney, Texas 75126  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

<b>DATES</b>	<b>Assigned</b>	31-Aug-2015	<b>Screening</b>	16-Oct-2015	<b>EPA Due</b>	24-Feb-2016
	<b>PCW</b>	16-Oct-2015				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Smurfit Kappa Orange County LLC
<b>Reg. Ent. Ref. No.</b>	RN100754779
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>		<b>No. of Violations</b>	3	
<b>Enf./Case ID No.</b>	51495	<b>Order Type</b>	1660	
<b>Docket No.</b>	2015-1659-AIR-E	<b>Government/Non-Profit</b>	No	
<b>Media Program(s)</b>	Air	<b>Enf. Coordinator</b>	Amancio R. Gutierrez	
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 5	
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  **Adjustment** **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   **Enhancement** **Subtotal 4**

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  **Enhancement\*** **Subtotal 6**

Total EB Amounts	\$1,760
Estimated Cost of Compliance	\$9,750

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  **Reduction** **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

Screening Date 16-Oct-2015

Docket No. 2015-1659-AIR-E

PCW

Respondent Smurfit Kappa Orange County LLC

Policy Revision 4 (April 2014)

Case ID No. 51495

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100754779

Media [Statute] Air

Enf. Coordinator Amancio R. Gutierrez

### 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> )	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 judgments 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%

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) 25%

#### >> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

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

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations and one order containing a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 25%

#### >> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 25%

Screening Date 16-Oct-2015

Docket No. 2015-1659-AIR-E

PCW

Respondent Smurfit Kappa Orange County LLC

Policy Revision 4 (April 2014)

Case ID No. 51495

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100754779

Media [Statute] Air

Enf. Coordinator Amancio R. Gutierrez

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code §§ 116.115(b)(2)(F), 116.615(2), and 122.143(4), Tex. Health & Safety Code § 382.085(b), Federal Operating Permit ("FOP") No. O2979, Special Terms & Conditions ("STC") No. 10, and Standard Permit Registration No. 77162

Violation Description

Failed to comply with maximum emissions rate ("MER"). Specifically, the Respondent exceeded the nitrogen oxides ("NOx") MER of 2.4 pounds per hour ("lbs/hr") by approximately 0.76 lb/hr at the Combined Heat and Power ("CHP") Unit, Emission Point Number ("EPN") CHP, on 577 instances during the period from January 1, 2014 through June 15, 2015, resulting in the unauthorized release of approximately 438.52 lbs of NOx.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants that do 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 6

92 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$22,500

Six quarterly events are recommended for the instances of non-compliance that occurred from January 1, 2014 through June 15, 2015.

Good Faith Efforts to Comply

25.0%

Reduction \$5,625

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

Notes The Respondent completed corrective measures on August 11, 2015, before the September 1, 2015 Notice of Enforcement ("NOE").

Violation Subtotal \$16,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$402

Violation Final Penalty Total \$23,624

This violation Final Assessed Penalty (adjusted for limits) \$23,624

# Economic Benefit Worksheet

**Respondent** Smurfit Kappa Orange County LLC

**Case ID No.** 51495

**Reg. Ent. Reference No.** RN100754779

**Media** Air  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	1-Jan-2014	11-Aug-2015	1.61	\$402	n/a	\$402
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a permit amendment for Standard Permit Registration No. 77162 to increase the NOx emissions rate for EPN CHP. The Date Required is the first date of non-compliance and the Final Date is the date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,000

TOTAL \$402

Screening Date 16-Oct-2015  
 Respondent Smurfit Kappa Orange County LLC  
 Case ID No. 51495

Docket No. 2015-1659-AIR-E

PCW

Policy Revision 4 (April 2014)  
 PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100754779

Media [Statute] Air

Enf. Coordinator Amancio R. Gutierrez

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 122.143(4), Tex. Health & Safety Code § 382.085(b), FOP No. Q2979, STC No. 10, and Standard Permit Registration No. 77162, General Requirements No. 4(G)

Violation Description

Failed to re-certify the CHP Unit as recommended by the manufacturer's maintenance schedule. Specifically, the CHP Unit was due for re-certification on May 11, 2015, but the required re-certification was not conducted until August 7, 2015.

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	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants that 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 1

88 Number of violation days

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

Violation Base Penalty \$1,750

One single event is recommended for the monitoring that was not conducted.

Good Faith Efforts to Comply

25.0%

Reduction \$437

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

Notes The Respondent completed corrective measures on August 7, 2015, before the September 1, 2015 Notice of Enforcement ("NOE").

Violation Subtotal \$1,313

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,251

Violation Final Penalty Total \$1,838

This violation Final Assessed Penalty (adjusted for limits) \$1,838

# Economic Benefit Worksheet

**Respondent** Smurfit Kappa Orange County LLC  
**Case ID No.** 51495  
**Reg. Ent. Reference No.** RN100754779  
**Media** Air  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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)	\$2,000	11-May-2015	7-Aug-2015	0.24	\$24	n/a	\$24

Notes for DELAYED costs

Estimated cost to re-certify the CHP Unit. The Date Required is the first date of non-compliance and the Final Date is the date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	29-Sep-2011	11-May-2015	4.53	\$227	\$1,000	\$1,227
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to re-certify the CHP Unit. The Date Required is the first date the CHP Unit could have been re-certified and the Final Date is the last date the CHP Unit could have been re-certified.

Approx. Cost of Compliance

\$3,000

**TOTAL**

\$1,251

Screening Date 16-Oct-2015

Docket No. 2015-1659-AIR-E

PCW

Respondent Smurfit Kappa Orange County LLC

Policy Revision 4 (April 2014)

Case ID No. 51495

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100754779

Media [Statute] Air

Enf. Coordinator Amancio R. Gutierrez

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(A), Tex. Health & Safety Code § 382.085(b), and FOP No. O2979, General Terms and Conditions

Violation Description

Failed to report all instances of deviations. Specifically, the semi-annual deviation report for the December 3, 2014 through June 2, 2015 reporting period did not include a deviation for failing to re-certify the CHP Unit as recommended by the manufacturer's maintenance schedule.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	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 1

106 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$250

One single event is recommended for the incomplete report.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$107

Violation Final Penalty Total \$328

This violation Final Assessed Penalty (adjusted for limits) \$328

# Economic Benefit Worksheet

**Respondent** Smurfit Kappa Orange County LLC  
**Case ID No.** 51495  
**Reg. Ent. Reference No.** RN100754779  
**Media** Air  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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)	\$1,500	2-Jul-2015	30-May-2016	0.91	\$5	\$91	\$96
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	2-Jul-2015	30-May-2016	0.91	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to submit a revised deviation report for the December 3, 2014 through June 2, 2015 reporting period that includes the deviation for failing to re-certify the CHP Unit as recommended by the manufacturer's maintenance schedule and to implement measures and/or procedures to ensure that all deviations are timely reported. The Date Required is the date the report was due and the Final Date is the estimated date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,750
---------

**TOTAL**

\$107
-------

The TCEQ is committed to accessibility.

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



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN603424292, RN100754779, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

**Customer, Respondent, or Owner/Operator:** CN603424292, Smurfit Kappa Orange County LLC  
**Classification:** SATISFACTORY **Rating:** 3.57  
**Regulated Entity:** RN100754779, SMURFIT KAPPA ORANGE COUNTY FORNEY MILL  
**Classification:** SATISFACTORY **Rating:** 5.00  
**Complexity Points:** 10 **Repeat Violator:** NO  
**CH Group:** 14 - Other  
**Location:** 855 E US HIGHWAY 80 FORNEY, TX 75126-8614, KAUFMAN COUNTY  
**TCEQ Region:** REGION 04 - DFW METROPLEX

### ID Number(s):

**INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE**  
REGISTRATION # (SWR) 73961

**AIR NEW SOURCE PERMITS PERMIT 23890**

**AIR NEW SOURCE PERMITS REGISTRATION 40561**

**AIR NEW SOURCE PERMITS ACCOUNT NUMBER KB0156B**

**AIR NEW SOURCE PERMITS AFS NUM 4825700031**

**AIR NEW SOURCE PERMITS REGISTRATION 53953**

**AIR NEW SOURCE PERMITS REGISTRATION 77162**

**AIR NEW SOURCE PERMITS PERMIT 80892**

**AIR NEW SOURCE PERMITS REGISTRATION 84013**

**AIR NEW SOURCE PERMITS REGISTRATION 119335**

**STORMWATER PERMIT TXR05AH87**

**AIR OPERATING PERMITS PERMIT 2979**

**AIR OPERATING PERMITS ACCOUNT NUMBER KB1056B**

**AIR EMISSIONS INVENTORY ACCOUNT NUMBER KB0156B**

**POLLUTION PREVENTION PLANNING ID NUMBER**  
P08456

**Compliance History Period:** September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

**Date Compliance History Report Prepared:** December 04, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** December 04, 2010 to December 04, 2015

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

**Name:** Amancio R. Gutierrez

**Phone:** (512) 239-3921

### 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: 07/31/2011 ADMINORDER 2010-2030-AIR-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter F 101.201(e)

5C THSC Chapter 382 382.085(b)

Description: Failed to report an excess opacity event within 24 hours after discovery. Specifically, Incident No. 129640 was discovered on September 13, 2009 at 9:36 p.m., but was not reported until September 21, 2010 at 8:54 a.m.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

5C THSC Chapter 382 382.085(b)

Rqmt Prov: Permit 80892, SC 10 PERMIT

Description: Failed to limit opacity to ten percent averaged over a six-minute period. Specifically, opacity was 48.84 percent for six minutes from the Wood Fired Boiler Stack, emission point number ("EPN") WBLR, during an excess opacity event (Incident No. 129640) that occurred on September 13, 2009, when the operator allowed the oxygen level to rise above 12 percent causing the Electrostatic Precipitator ("ESP") to trip.

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter F 101.201(e)

5C THSC Chapter 382 382.085(b)

Description: Failed to report an excess opacity event within 24 hours after discovery. Specifically, Incident No. 144280 was discovered on November 2, 2008 at 4:06 a.m., but was not reported until September 1, 2010 at 10:44 a.m.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THSC Chapter 382 382.085(b)

Rqmt Prov: Permit 80892, SC 10 PERMIT

Description: Failed to limit opacity to ten percent averaged over a six-minute period. Specifically, opacity was 40.26 percent for twelve minutes from the Wood Fired Boiler Stack, EPN WBLR, during an excess opacity event (Incident No. 144280) that occurred on November 2, 2008, when performance of the ESP was suboptimal.

Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter F 101.201(e)  
5C THSC Chapter 382 382.085(b)

Description: Failed to report an excess opacity event within 24 hours after discovery. Specifically, Incident No. 146336 was discovered on October 18, 2010 at 6:24 p.m., but was not reported until October 20, 2010 at 10:09 a.m.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THSC Chapter 382 382.085(b)

Rqmt Prov: Permit 80892, SC 10 PERMIT

Description: Failed to limit opacity to ten percent averaged over a six-minute period. Specifically, opacity was 34.77 percent for six minutes from the Wood Fired Boiler Stack, EPN WBLR, during an excess opacity event (Incident No. 146336) that occurred on October 18, 2010, when a switch on the boiler steam drum blew a fuse causing the unit to trip on a low level in the steam drum alarm.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

Item 1	December 20, 2010	(876884)
Item 2	January 05, 2011	(879632)
Item 3	January 10, 2011	(880238)
Item 4	April 01, 2011	(894901)
Item 5	July 19, 2011	(937814)
Item 6	September 30, 2011	(944531)
Item 7	December 07, 2012	(1045891)
Item 8	August 23, 2013	(1103951)
Item 9	January 28, 2014	(1138885)
Item 10	June 28, 2014	(1146493)
Item 11	August 01, 2014	(1150155)
Item 12	August 13, 2014	(1184257)
Item 13	October 23, 2014	(1171008)
Item 14	December 11, 2014	(1192533)
Item 15	February 11, 2015	(1217253)
Item 16	March 20, 2015	(1227368)
Item 17	May 21, 2015	(1240116)
Item 18	August 07, 2015	(1255300)
Item 19	September 17, 2015	(1272516)
Item 20	October 30, 2015	(1280303)

**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.

1	Date:	09/01/2015 (1268627)	CN603424292
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5C THSC Chapter 382 382.085(b) Special Condition 9 PERMIT	
	Description:	Failure to conduct annual NOX and CO testing for the gas dryers in 2014.	
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 122, SubChapter B 122.145(2) 5C THSC Chapter 382 382.085(b)	
	Description:	Failure to report all instances of deviations of the Title V permit on deviation reports.	

**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  
SMURFIT KAPPA ORANGE  
COUNTY LLC  
RN100754779**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2015-1659-AIR-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 Smurfit Kappa Orange County LLC ("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 together stipulate that:

1. The Respondent owns and operates a cardboard manufacturing plant located at 855 East United States Highway 80 in Forney, Kaufman County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The 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 September 6, 2015.
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 Twenty-Five Thousand Seven Hundred Ninety Dollars (\$25,790) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twenty Thousand Six

- Hundred Thirty-Two Dollars (\$20,632) of the administrative penalty and Five Thousand One Hundred Fifty-Eight Dollars (\$5,158) 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.
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 Plant:
    - a. On August 7, 2015, re-certified the Combined Heat and Power ("CHP") Unit, Emission Point Number ("EPN") CHP; and
    - b. On August 11, 2015, obtained a permit amendment for Standard Permit Registration No. 77162 to increase the nitrogen oxide ("NOx") emissions rate for the CHP Unit, EPN CHP.
  10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
  11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
  12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to comply with maximum emissions rate ("MER"), in violation of 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 116.615(2), and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), Federal Operating Permit ("FOP") No. O2979, Special Terms & Conditions ("STC") No. 10, and Standard Permit Registration No. 77162, as documented during an investigation conducted on July 9, 2015. Specifically, the Respondent exceeded the NOx MER of 2.4 pounds per hour ("lbs/hr") by approximately 0.76 lb/hr for NOx at the CHP

Unit, EPN CHP, on 577 instances during the period from January 1, 2014 through June 15, 2015, resulting in the unauthorized release of approximately 438.52 lbs of NOx.

2. Failed to re-certify the CHP Unit as recommended by the manufacturer's maintenance schedule, in violation of 30 TEX. ADMIN. CODE § 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), FOP No. O2979, STC No. 10, and Standard Permit Registration No. 77162, General Requirements No. 4(G), as documented during an investigation conducted on July 9, 2015. Specifically, the CHP Unit was due for re-certification on May 11, 2015, but the required re-certification was not conducted until August 7, 2015.
3. Failed to report all instances of deviations, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(A), TEX. HEALTH & SAFETY CODE § 382.085(b), and FOP No. O2979, General Terms and Conditions, as documented during an investigation conducted on July 9, 2015. Specifically, the semi-annual deviation report for the December 3, 2014 through June 2, 2015 reporting period did not include a deviation for failing to re-certify the CHP Unit as recommended by the manufacturer's maintenance schedule.

### **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: Smurfit Kappa Orange County LLC, Docket No. 2015-1659-AIR-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. 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. Submit a revised deviation report for the December 3, 2014 through June 2, 2015 reporting period that includes the deviation for failing to re-certify

the CHP Unit as recommended by the manufacturer's maintenance schedule; and

- ii. Implement measures and/or procedures to ensure that all deviations are timely reported.
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

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

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

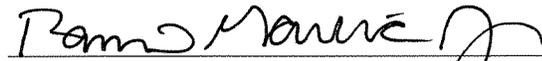
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the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

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
For the Executive Director

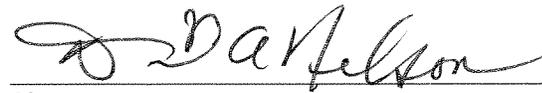
4/19/16  
\_\_\_\_\_  
Date

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

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

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

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

  
\_\_\_\_\_  
Signature

12 JANUARY 2016  
\_\_\_\_\_  
Date

DAVID A. NELSON  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Smurfit Kappa Orange County LLC

VICE PRESIDENT OF PAPER OPERATIONS  
\_\_\_\_\_  
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.