

W.T. Byler Co., Inc.
RN105623466
Docket No. 2014-1699-AIR-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

intersection of Penn City Road and Jacintoport Boulevard, Channelview, Harris County

Type of Operation:

portable air curtain incinerator

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$5,654.58 (2011-0995-AIR-E; referred to the AG)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: June 3, 2016**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$11,901**Total Paid to General Revenue:** \$11,901**Total Due to General Revenue:** \$0**Compliance History Classifications:**

Person/CN – Satisfactory
Site/RN – Satisfactory

Major Source: No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** April 2014

W.T. Byler Co., Inc.

RN105623466

Docket No. 2014-1699-AIR-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: September 5, 2014
Date(s) of NOV(s): N/A
Date(s) of NOE(s): October 21, 2014

Violation Information

1. Failed to submit semi-annual deviation reports and an annual permit compliance certification (PCC) timely and accurately [TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(B), and 122.146(1) and (2); Federal Operating Permit (“FOP”) O-3718/General Operating Permit (“GOP”) No. 518, Terms and Conditions (b)(4)(C)(ii) and (b)(4)(D); and TCEQ Agreed Order Docket No. 2011-0995-AIR-E, Ordering Provision No. 2.a.i.].
2. Failed to perform quarterly visible emissions observations [TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 122.143(4); FOP O-3718/GOP No. 518, Terms and Conditions (b)(13)(B)(i); and TCEQ Agreed Order Docket No. 2011-0995-AIR-E, Ordering Provision No. 2.a.ii.].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Within 30 days:
 - a. Implement procedures designed to ensure that semi-annual deviation reports and PCCs are submitted timely and accurately; and
 - b. Implement procedures to ensure the quarterly visible emissions observations are conducted and recorded as required by FOP O-3718/GOP No. 518.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: June 10, 2015
Date Answer Filed: November 4, 2015
SOAH Referral Date: December 7, 2015
Hearing Date(s):
Preliminary Hearing: January 21, 2016 (waived)
Evidentiary Hearing: May 26, 2016 (scheduled)
Settlement Date: May 4, 2016

Contact Information

TCEQ Attorneys: David A. Terry, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Rajesh Acharya, Enforcement Division, (512) 239-0577

TCEQ Regional Contact: Andy Goodridge, Houston Regional Office, (713) 767-3500

Respondent Contact: Geoffrey Pospisil, Safety Director, W.T. Byler Co., Inc., 15203 Lillja Road, Houston, Texas 77060

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	27-Oct-2014	Screening	6-Nov-2014	EPA Due	
	PCW	10-Apr-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	W.T. Byler Co., Inc.
Reg. Ent. Ref. No.	RN105623466
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41876	No. of Violations	2
Docket No.	2014-1699-AIR-E	Order Type	Findings
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,750
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$1,750
---------------------------	-------------------	--------------------------------	---------

Notes: Enhancement for one agreed order with denial of liability.

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
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$1,741
Estimated Cost of Compliance	\$4,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,500
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	13.3%	Adjustment	\$1,401
---	-------	-------------------	---------

Reduces or enhances the Final Subtotal by the indicated percentage.

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

Final Penalty Amount	\$11,901
-----------------------------	----------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,901
-----------------------------------	-------------------------------	----------

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

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$11,901
------------------------	----------

Screening Date 6-Nov-2014

Docket No. 2014-1699-AIR-E

PCW

Respondent W.T. Byler Co., Inc.

Policy Revision 4 (April 2014)

Case ID No. 41876

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105623466

Media [Statute] Air

Enf. Coordinator Rajesh Acharya

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 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%
<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) 20%

>> **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 agreed order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 20%

Screening Date 6-Nov-2014 **Docket No.** 2014-1699-AIR-E **PCW**
Respondent W.T. Byler Co., Inc. *Policy Revision 4 (April 2014)*
Case ID No. 41876 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN105623466
Media [Statute] Air
Enf. Coordinator Rajesh Acharya

Violation Number 1
Rule Cite(s) TCEQ Agreed Order Docket No. 2011-0995-AIR-E, Ordering Provision No. 2.a.i., 30 Tex. Admin. Code §§ 122.143(4), 122.145(2)(B), 122.146(1), and 122.146(2), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit ("FOP") O-3718/General Operating Permit ("GOP") No. 518, Terms and Conditions (b)(4)(C)(ii) and (b)(4)(D)
Violation Description Failed to submit semi-annual deviation reports and an annual permit compliance certification ("PCC") timely and accurately. Specifically, the Respondent did not submit semi-annual deviation reports for failing to perform quarterly visible emissions observations and one PCC since the effective date of TCEQ Agreed Order, Docket No. 2011-0995-AIR-E on May 2, 2013 and implement procedures to ensure that semi-annual deviation reports and PCCs are submitted timely and accurately.

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			5.0%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 4 554 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$5,000

Four single events are recommended (one for each deviation report that was due by June 13, 2013, December 13, 2013, and June 13, 2014 and one for the PCC that was due by December 13, 2013).

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$157 **Violation Final Penalty Total** \$6,801

This violation Final Assessed Penalty (adjusted for limits) \$6,801

Economic Benefit Worksheet

Respondent W.T. Byler Co., Inc.
Case ID No. 41876
Reg. Ent. Reference No. RN105623466
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

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	\$1,500	2-May-2013	4-Jun-2015	2.09	\$157	n/a	\$157
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to implement procedures designed to ensure that semi-annual deviation reports and annual PCCs are submitted timely and accurately. Date Required is the effective date of the agreed order. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$157

Screening Date 6-Nov-2014
Respondent W.T. Byler Co., Inc.
Case ID No. 41876
Reg. Ent. Reference No. RN105623466
Media [Statute] Air
Enf. Coordinator Rajesh Acharya

Docket No. 2014-1699-AIR-E

PCW

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

Violation Number

Rule Cite(s) TCEQ Agreed Order Docket No. 2011-0995-AIR-E, Ordering Provision No. 2.a.ii., 30 Tex. Admin. Code § 122.143(4), Tex. Health & Safety Code § 382.085(b), and FOP O-3718/GOP No. 518, Terms and Conditions (b)(13)(B)(i)

Violation Description

Failed to perform quarterly visible emissions observations. Specifically, the Respondent failed to perform visible emissions observations on the air curtain incinerator at least once during each calendar quarter since the effective date of TCEQ Agreed Order, Docket No. 2011-0995-AIR-E on May 2, 2013 and implement procedures to ensure that the quarterly visible emissions observations are performed.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="3.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="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

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

Violation Base Penalty

Five single events are recommended based on five quarterly observations that were missed.

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent W.T. Byler Co., Inc.
Case ID No. 41876
Reg. Ent. Reference No. RN105623466
Media Air
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

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	\$250	2-May-2013	4-Jun-2015	2.09	\$26	n/a	\$26
Training/Sampling	\$1,500	2-May-2013	4-Jun-2015	2.09	\$157	n/a	\$157
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to implement procedures to ensure the visible emissions observations are conducted (\$1,500) and properly recorded (\$250). Date Required is the effective date of the agreed order. Final Date is the estimated compliance date.

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]	\$1,250	1-Apr-2013	30-Sep-2014	2.42	\$151	\$1,250	\$1,401
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs
 Estimated cost to conduct visible emissions observations (\$250 per quarter x 5 missed quarters). Date Required is first day of the calendar quarter that an observation could have been conducted. Final Date is the last day of the last calendar quarter that an observation should have been conducted.

Approx. Cost of Compliance	\$3,000	TOTAL	\$1,584
-----------------------------------	---------	--------------	---------

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.



Compliance History Report

PUBLISHED Compliance History Report for CN603819293, RN105623466, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN603819293, W. T. Byler Co., Inc. **Classification:** SATISFACTORY **Rating:** 22.50

Regulated Entity: RN105623466, PORTABLE TRENCH BURNER SERIAL NO 24684 **Classification:** SATISFACTORY **Rating:** 22.50

Complexity Points: 6 **Repeat Violator:** NO

CH Group: 09 - Construction

Location: INTX OF PENN CITY RD & JACINTOPORT BLVD IN CHANNELVIEW, TX, HARRIS COUNTY

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):
AIR NEW SOURCE PERMITS AFS NUM 4877701816
AIR NEW SOURCE PERMITS ACCOUNT NUMBER 960239M
AIR NEW SOURCE PERMITS REGISTRATION 86202L001
AIR NEW SOURCE PERMITS REGISTRATION 86202L002
AIR EMISSIONS INVENTORY ACCOUNT NUMBER 960239M
AIR OPERATING PERMITS PERMIT 3105
AIR OPERATING PERMITS PERMIT 3718

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: February 02, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 02, 2010 to February 02, 2015

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

Name: Rajesh Acharya

Phone: (512) 239-0577

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: 05/02/13 ADMIN ORDER 2011-0995-AIR-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

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

Rqmt. Prov: GOP #O-3105, T&C (b)(3)(C)(ii)(c) OP

Description: Failed to submit a semi-annual deviation reports for the November 14, 2008 through May 14, 2009 and May 15, 2009 through November 13, 2009 reporting periods when violations were known to have occurred.

Classification: Moderate

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

Rqmt. Prov: GOP #O-3105, T&C (b)(10)(B)(i) OP

Description: Failed to perform quarterly visible emissions observations. Specifically, the Respondent failed to perform visible emissions observations on the ACI at least once during each calendar quarter unless the source is not in operation during any portion of the calendar quarter.

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.146(1)
30 TAC Chapter 122, SubChapter B 122.165(a)(8)
5C THSC Chapter 382, 382.085(b)

Rqmt. Prov: GOP #O-3105, T&C (b)(3)(D)(i) OP

Description: Failed to certify an annual permit compliance certification ("PCC"). Specifically, the Respondent did not certify the PCC submitted for the November 14, 2008 through November 13, 2009 reporting period.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

N/A

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:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
W.T. BYLER CO., INC.;
RN105623466**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2014-1699-AIR-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding W.T. Byler Co., Inc. ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, to request an evidentiary hearing, receive notice of an evidentiary hearing, and a right to appeal. By entering into this Order, Respondent agrees to waive all notice and procedural rights which might otherwise be authorized or required in this action.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon Respondent.

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

FINDINGS OF FACT

1. Respondent owns and operates a portable air curtain incinerator, Serial Number 24684, located in Channelview, Harris County, Texas (the "Plant"). The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on September 5, 2014, an investigator documented that Respondent:
 - a. Failed to submit semi-annual deviation reports and an annual permit compliance certification ("PCC") timely and accurately. Specifically, Respondent did not submit semi-annual deviation reports for failing to perform quarterly visible emissions observations and one PCC since the effective date of TCEQ Agreed Order, Docket No. 2011-0995-AIR-E on May 2, 2013, and implement procedures to ensure that semi-annual deviation reports and PCCs are submitted timely and accurately; and
 - b. Failed to perform quarterly visible emissions observations. Specifically, Respondent failed to perform visible emissions observations on the air curtain incinerator at least once during each calendar quarter since the effective date

of TCEQ Agreed Order, Docket No. 2011-0995-AIR-E on May 2, 2013, and implement procedures to ensure that the quarterly visible emissions observations are performed.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to submit semi-annual deviation reports and an annual PCC timely and accurately, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE §§ 122.143(4), 122.145(2)(B), and 122.146(1) and (2); Federal Operating Permit ("FOP") O-3718/General Operating Permit ("GOP") No. 518, Terms and Conditions (b)(4)(C)(ii) and (b)(4)(D); and TCEQ Agreed Order Docket No. 2011-0995-AIR-E, Ordering Provision No. 2.a.i.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to perform quarterly visible emissions observations, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b); 30 TEX. ADMIN. CODE § 122.143(4); FOP O-3718/GOP No. 518, Terms and Conditions (b)(13)(B)(i); and TCEQ Agreed Order Docket No. 2011-0995-AIR-E, Ordering Provision No. 2.a.ii.
4. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of eleven thousand nine hundred one dollars (\$11,901.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid eleven thousand nine hundred one dollars (\$11,901.00) of the penalty.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 5 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order:
 - i. Implement procedures designed to ensure that semi-annual deviation reports and PCCs are submitted timely and accurately; and
 - ii. Implement procedures to ensure the quarterly visible emissions observations are conducted and recorded as required by FOP O-3718/GOP No. 518.
 - b. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Air Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street – Suite H
Houston, Texas 77203

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Plant operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

8. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date it is signed by the Commission or the Executive Director. 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



For the Executive Director

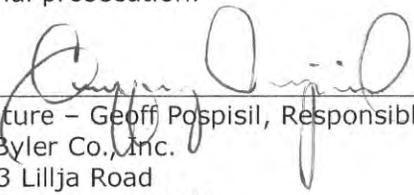
June 3, 2016
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Geoff Pospisil, Responsible Official
W.T. Byler Co., Inc.
15203 Lillja Road
Houston, Texas 77060

5-4-16
Date

If mailing address has changed, please check this box and provide the new address below:
