

Executive Summary – Enforcement Matter – Case No. 48472
James Hardie Building Products Inc.
RN100763895
Docket No. 2014-0451-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

James Hardie Building Products, 820 Sparks Drive, Cleburne, Johnson County

Type of Operation:

Cement fiberboard 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: August 8, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$33,750

Amount Deferred for Expedited Settlement: \$6,750

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$13,500

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$13,500

Name of SEP: North Central Texas Council of Governments (Third-Party Pre-Approved)

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 13, 2014

Date(s) of NOE(s): February 26, 2014

**Executive Summary – Enforcement Matter – Case No. 48472
James Hardie Building Products Inc.
RN100763895
Docket No. 2014-0451-AIR-E**

Violation Information

Failed to meet the nitrogen oxides (“NOx”) emissions specification of 30 parts per million (“ppm”) by volume at 3 percent oxygen, dry basis, at Boiler Nos. 1 through 5 (Emission Point Nos. [“EPNs”] BL110201, BL210202, BL310203, BL410204, and BL510205, respectively). Specifically, the NOx emissions were measured to be 68.36 ppm, 42.62 ppm, 51.00 ppm, 51.00 ppm, and 62.60 ppm, respectively [30 TEX. ADMIN. CODE § 117.410(b)(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent successfully conducted the stacks test with passing results with respect to NOx emissions specifications for Boilers Nos. 1 through 5 (EPNs BL110201, BL210202, BL310203, BL410204, and BL510205) on April 4, 2014.

Technical Requirements:

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

Litigation Information

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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Rajesh Acharya, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-0577; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565
Respondent: Joseph C. Blasko, Company Secretary, James Hardie Building Products Inc., 26300 La Alameda, Suite 800, Mission Viejo, California 92691
Hetal Bhakta, Engineer, James Hardie Building Products Inc., 820 Sparks Drive, Cleburne, Texas 76033
Respondent's Attorney: Fran Phillips, Attorney, Gardere Wynne Sewell LLP, Thanksgiving Tower, Suite 3000, 1601 Elm Street, Dallas, Texas 75201

Attachment A
Docket Number: 2014-0451-AIR-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|-----------------------------------|--|
| Respondent: | James Hardie Building Products Inc. |
| Penalty Amount: | Twenty-Seven Thousand Dollars (\$27,000) |
| SEP Offset Amount: | Thirteen Thousand Five Hundred Dollars (\$13,500) |
| Type of SEP: | Contribution to a Third-Party Pre-Approved SEP |
| Third-Party Administrator: | North Central Texas Council of Governments |
| Project Name: | <i>North Central Texas Clean School Bus Program</i> |
| Location of SEP: | Air Quality Control Region No. 215; Dallas - Fort Worth; Johnson County |

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

1. Project Description

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **North Central Texas Council of Governments** for the *North Central Texas Clean School Bus Program* SEP. The contribution will be used in accordance with the SEP the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to reduce nitrogen oxides (“NO_x”), volatile organic compounds, carbon monoxide, and particulate matter emissions by replacing older diesel buses with newer buses, or retrofitting them with NO_x reduction technology, that meet more stringent emission standards. The Third-Party Administrator shall use the SEP Offset Amount for up to either 100% of the purchase price of a school bus that is model year 2010 or newer, to replace a diesel school bus that is model year 2002 or older, or 100% of the cost to retrofit a diesel school bus that is model year 2002 or older, and with NO_x reduction technology. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that

James Hardie Building Products Inc.
Agreed Order - Attachment A

is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP. The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP will directly benefit air quality by reducing harmful exhaust emissions which contribute to the formation of ozone and may cause or exacerbate a number of respiratory diseases, including asthma. In addition, by encouraging less school bus idling, this SEP contributes to public awareness of environmental matters.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **North Central Texas Council of Governments SEP** and shall mail the contribution with a copy of the Agreed Order to:

NCTCOG
Centerpoint Two
616 Six Flags Drive
Arlington, Texas 76011

3. Records and Reporting

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

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

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; shall make the check payable to "Texas Commission on Environmental Quality;" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 4-Mar-2014 | Screening | 21-Mar-2014 | EPA Due | |
| | PCW | 20-Jun-2014 | | | | |

| | |
|--|-------------------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | James Hardie Building Products Inc. |
| Reg. Ent. Ref. No. | RN100763895 |
| Facility/Site Region | 4-Dallas/Fort Worth |
| Major/Minor Source | Major |

| | | | |
|--|-----------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 48472 | No. of Violations | 1 |
| Docket No. | 2014-0451-AIR-E | Order Type | 1660 |
| 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 | \$10,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$37,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history. The Respondent has submitted one Notice of Intent to conduct an audit and one disclosure of violations. However, because a reduction would be below zero, the enhancement defaults to zero.

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** **-\$3,750**

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

Total EB Amounts \$3,394
Approx. Cost of Compliance \$25,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$33,750**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$33,750**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$33,750**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$6,750**

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 **\$27,000**

Screening Date 21-Mar-2014

Docket No. 2014-0451-AIR-E

PCW

Respondent James Hardie Building Products Inc.

Policy Revision 2 (September 2002)

Case ID No. 48472

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100763895

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>) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (<i>number of counts</i>) | 0 | 0% |
| Emissions | Chronic excessive emissions events (<i>number of events</i>) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>) | 1 | -1% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>) | 1 | -2% |

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) 0%

>> 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

No adjustment for compliance history. The Respondent has submitted one Notice of Intent to conduct an audit and one disclosure of violations. However, because a reduction would be below zero, the enhancement defaults to zero.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 21-Mar-2014

Docket No. 2014-0451-AIR-E

PCW

Respondent James Hardie Building Products Inc.

Policy Revision 2 (September 2002)

Case ID No. 48472

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100763895

Media [Statute] Air

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 117.410(b)(1)(C) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to meet the nitrogen oxides ("NOx") emissions specification of 30 parts per million by volume at 3 percent oxygen, dry basis, at Boiler Nos. 1 through 5 (Emission Point Nos. BL110201, BL210202, BL310203, BL410204, and BL510205, respectively). Specifically, the NOx emissions were measured to be 68.36 parts per million ("ppm"), 42.62 ppm, 51.00 ppm, 51.00 ppm, and 62.60 ppm, respectively.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | X |
| Potential | | | |

Percent 25%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 15

977 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | X |
| single event | |

mark only one with an x

Violation Base Penalty \$37,500

Fifteen annual events are recommended, from the date of the first stack testing on July 18, 2011 to the screening date on March 21, 2014 (3 annual events per boiler).

Good Faith Efforts to Comply

10.0% Reduction

\$3,750

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

Notes

The Respondent came into compliance on April 4, 2014, after the Notice of Enforcement dated February 26, 2014.

Violation Subtotal \$33,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,394

Violation Final Penalty Total \$33,750

This violation Final Assessed Penalty (adjusted for limits) \$33,750

Economic Benefit Worksheet

Respondent James Hardie Building Products Inc.
Case ID No. 48472
Reg. Ent. Reference No. RN100763895
Media Air
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

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

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 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | \$25,000 | 18-Jul-2011 | 4-Apr-2014 | 2.72 | \$3,394 | n/a | \$3,394 |
| 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 costs to conduct stack testing on all five boilers to demonstrate compliance. The Date Required is the date of the first stack test and 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

\$25,000

TOTAL

\$3,394

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 CN600482475, RN100763895, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN600482475, James Hardie Building Products Inc. **Classification:** SATISFACTORY **Rating:** 0.13
Regulated Entity: RN100763895, JAMES HARDIE BUILDING PRODUCTS **Classification:** SATISFACTORY **Rating:** 0.13
Complexity Points: 14 **Repeat Violator:** NO
CH Group: 10 - Cement and Concrete Product Manufacturing
Location: 820 SPARKS DRIVE, CLEBURNE, TX 76033-7700, JOHNSON COUNTY
TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

| | |
|--|---|
| AIR NEW SOURCE PERMITS ACCOUNT NUMBER JH0263T | AIR NEW SOURCE PERMITS REGISTRATION 54293 |
| AIR NEW SOURCE PERMITS PERMIT 54295 | AIR NEW SOURCE PERMITS AFS NUM 4825100065 |
| INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # (SWR) 87672 | INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXR000061663 |
| STORMWATER PERMIT TXR05AQ94 | STORMWATER PERMIT TXR15ZI37 |
| INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED ID NUMBER F1769 | UNDERGROUND INJECTION CONTROL PERMIT WDW416 |
| UNDERGROUND INJECTION CONTROL PERMIT WDW417 | AIR EMISSIONS INVENTORY ACCOUNT NUMBER JH0263T |
| AIR OPERATING PERMITS PERMIT 3431 | AIR OPERATING PERMITS ACCOUNT NUMBER JH0263T |

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: March 21, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 21, 2009 to March 21, 2014

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

Name: Heather Podlipny

Phone: (512) 239-2603

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:

N/A

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:

Notice of Intent Date: 03/12/2010 (798285)

Disclosure Date: 10/25/2010

Viol. Classification: Minor

Citation: 30 TAC Chapter 106, SubChapter T 106.454(1)(E)

Description: Labels posted near each remote reservoir degreaser could not be read.

Viol. Classification: Major

Citation: 30 TAC Chapter 106, SubChapter W 106.512(1)

Description: Failed to be able to locate the registration for the 345 horsepower diesel generator.

Viol. Classification: Major

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)

Description: Failed to have authorization for the steam discharge from the autoclave as it is a source of VOC and HAP emissions.

Viol. Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.116(a)

Description: Failed to fully enclose the Ball Mill #4 as represented in the permit application.

Viol. Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.116(a)

Description: Failed to operate the south sand silo with fabric filters as represented in the permit application and as required by the permit.

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
JAMES HARDIE BUILDING
PRODUCTS INC.
RN100763895

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2014-0451-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 James Hardie Building Products Inc. ("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, represented by Ms. Fran Phillips of the law firm of Gardere Wynne Sewell LLP, together stipulate that:

1. The Respondent owns and operates a cement fiberboard manufacturing plant at 820 Sparks Drive in Cleburne, Johnson 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 March 3, 2014.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirty-Three Thousand Seven Hundred Fifty Dollars (\$33,750) is assessed by the Commission in settlement of the violations alleged

in Section II ("Allegations"). The Respondent has paid Thirteen Thousand Five Hundred Dollars (\$13,500) of the administrative penalty and Six Thousand Seven Hundred Fifty Dollars (\$6,750) 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. Thirteen Thousand Five Hundred Dollars (\$13,500) 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 successfully conducted the stacks test with passing results with respect to nitrogen oxides ("NOx") emissions specifications for Boilers Nos. 1 through 5 (Emission Point Nos. ["EPNs"] BL110201, BL210202, BL310203, BL410204, and BL510205) on April 4, 2014.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to meet the nitrogen oxides ("NOx") emissions specification of 30 parts per million by volume at 3 percent oxygen, dry basis, at Boiler Nos. 1 through 5 (EPNs BL110201, BL210202, BL310203, BL410204, and BL510205, respectively), in violation of 30 TEX. ADMIN. CODE § 117.410(b)(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on January 13, 2014. Specifically, the NOx emissions were measured to be 68.36 parts per million ("ppm"), 42.62 ppm, 51.00 ppm, 51.00 ppm, and 62.60 ppm, respectively.

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: James Hardie Building Products Inc., Docket No. 2014-0451-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. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Thirteen Thousand Five Hundred Dollars (\$13,500) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director.

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

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

9/11/14

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.



Signature

July 1, 2014

Date

JOSEPH C BLASKO

Name (Printed or typed)
Authorized Representative of
James Hardie Building Products Inc.

Company Secretary

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: 2014-0451-AIR-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|-----------------------------------|--|
| Respondent: | James Hardie Building Products Inc. |
| Penalty Amount: | Twenty-Seven Thousand Dollars (\$27,000) |
| SEP Offset Amount: | Thirteen Thousand Five Hundred Dollars (\$13,500) |
| Type of SEP: | Contribution to a Third-Party Pre-Approved SEP |
| Third-Party Administrator: | North Central Texas Council of Governments |
| Project Name: | <i>North Central Texas Clean School Bus Program</i> |
| Location of SEP: | Air Quality Control Region No. 215; Dallas - Fort Worth; Johnson County |

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

1. Project Description

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **North Central Texas Council of Governments** for the *North Central Texas Clean School Bus Program* SEP. The contribution will be used in accordance with the SEP the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to reduce nitrogen oxides (“NO_x”), volatile organic compounds, carbon monoxide, and particulate matter emissions by replacing older diesel buses with newer buses, or retrofitting them with NO_x reduction technology, that meet more stringent emission standards. The Third-Party Administrator shall use the SEP Offset Amount for up to either 100% of the purchase price of a school bus that is model year 2010 or newer, to replace a diesel school bus that is model year 2002 or older, or 100% of the cost to retrofit a diesel school bus that is model year 2002 or older, and with NO_x reduction technology. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that

James Hardie Building Products Inc.
Agreed Order - Attachment A

is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP. The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP will directly benefit air quality by reducing harmful exhaust emissions which contribute to the formation of ozone and may cause or exacerbate a number of respiratory diseases, including asthma. In addition, by encouraging less school bus idling, this SEP contributes to public awareness of environmental matters.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **North Central Texas Council of Governments SEP** and shall mail the contribution with a copy of the Agreed Order to:

NCTCOG
Centerpoint Two
616 Six Flags Drive
Arlington, Texas 76011

3. Records and Reporting

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

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

4. **Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; shall make the check payable to "Texas Commission on Environmental Quality;" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. **Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. **Clean Texas Program**

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

7. **Other SEPs by TCEQ or Other Agencies**

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