

**Executive Summary – Enforcement Matter – Case No. 57606**  
**Starr County**  
**RN105864557**  
**Docket No. 2019-0587-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

No

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

Firebox Model S-527, 4548 Old Charco Blanco Road, Rio Grande City, Starr County

**Type of Operation:**

Air curtain incinerator ("ACI")

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** August 27, 2021

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$14,250

**Amount Deferred for Expedited Settlement:** \$2,850

**Total Paid to General Revenue:** \$11,400

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

Payment Plan: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** No

**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:** February 5, 2019

**Date(s) of NOE(s):** April 12, 2019

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**Docket No. 2019-0587-AIR-E**

***Violation Information***

1. Failed to conduct quarterly visible emissions observations. Specifically, the Respondent did not conduct visible emissions observations of the ACI that was in operation during the first, second, third, and fourth quarters of 2018 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.144(1), Federal Operating Permit ("FOP") No. O3351/General Operating Permit ("GOP") No. 518, Terms and Conditions ("TC") No. (b)(9)(A)(iii)(I), and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to conduct an annual performance test no more than 12 calendar months following the date of the previous test. Specifically, an annual performance test for the ACI was required to be performed by January 7, 2019, but was not performed [30 TEX. ADMIN. CODE §§ 101.20(1) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS § 60.8, FOP No. O3351/GOP No. 518, TC No. (b)(15)(B)(iii), and TEX. HEALTH & SAFETY CODE § 382.085(b)].
3. Failed to submit a deviation report no later than 30 days after the end of each reporting period. Specifically, the Respondent did not submit deviation reports for the January 7, 2017 through July 6, 2017, July 7, 2017 through January 6, 2018, January 7, 2018 through July 6, 2018, and July 7, 2018 through January 6, 2019 reporting periods, but a deviation report should have been submitted by August 5, 2017 to report the deviations for failing to submit the permit compliance certification ("PCC") and failing to conduct quarterly visible emissions observations; by February 5, 2018 to report the deviation for failing to conduct quarterly visible emissions observations; by August 5, 2018 to report the deviations for failing to submit the PCC and failing to conduct quarterly visible emissions observations; and by February 5, 2019, respectively, to report the deviations for failing to conduct quarterly visible emissions observations and failing to submit a deviation report for the January 7, 2018 through July 6, 2018 reporting period [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C), FOP No. O3351/GOP No. 518, TC No. (b)(3)(C)(ii)(III), and TEX. HEALTH & SAFETY CODE § 382.085(b)].
4. Failed to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance and failed to submit a PCC no later than 30 days after the end of the certification period. Specifically, the PCCs for the January 7, 2017 through January 6, 2018 and the January 7, 2018 through January 6, 2019 certification periods were due by February 5, 2018 and February 5, 2019, respectively, but were not submitted [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(1) and (2), FOP No. O3351/GOP No. 518, TC Nos. (b)(3)(D)(i) and (ii), and TEX. HEALTH & SAFETY CODE § 382.085(b)].

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5. Failed to maintain records for the disposal of ash generated from the ACI [30 TEX. ADMIN. CODE §§ 106.496(f)(2) and 122.143(4), Permit by Rule ("PBR") Registration No. 91967L002, FOP No. O3351/GOP No. 518, TC No. (b)(8)(B)(vi) and (b)(8)(D), and TEX. HEALTH & SAFETY CODE § 382.085(b)].

6. Failed to use the ACI to only burn trees, clean lumber, and brush from land-clearing. Specifically, on February 5, 2019, TCEQ staff observed metal materials, glass bottles, cable wiring, sheet metal, and other hardware items in the ash inside the ACI [30 TEX. ADMIN. CODE §§ 106.496(a) and 122.143(4), PBR Registration No. 91967L002, FOP No. O3351/GOP No. 518, Qualification Criteria No. (a)(5) and TC No. (b)(8)(B)(vi), and TEX. HEALTH & SAFETY CODE § 382.085(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

a. Within 30 days:

i. Begin conducting quarterly visible emissions observations of the ACI;

ii. Conduct a performance test of the ACI;

iii. Submit the deviation report for the January 7, 2017 through July 6, 2017 reporting period to report the deviations for failing to submit the PCC and failing to conduct quarterly visible emissions observations;

iv. Submit the deviation report for the July 7, 2017 through January 6, 2018 reporting period to report the deviation for failing to conduct quarterly visible emissions observations;

v. Submit the deviation report for the January 7, 2018 through July 6, 2018 reporting period to report the deviations for failing to submit the PCC and failing to conduct quarterly visible emissions observations;

vi. Submit the deviation report for the July 7, 2018 through January 6, 2019 reporting period to report the deviations for failing to conduct quarterly visible emissions observations and failing to submit a deviation report for the January 7, 2018 through July 6, 2018 reporting period;

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- vii. Implement measures and/or procedures designed to ensure that the deviation reports are submitted in a timely manner;
  - viii. Submit the PCCs for the January 7, 2017 through January 6, 2018 and the January 7, 2018 through January 6, 2019 certification periods;
  - ix. Implement measures and/or procedures designed to ensure that the PCCs are submitted in a timely manner;
  - x. Begin maintaining records for the disposal of ash generated from the ACI; and
  - xi. Implement measures and/or and procedures designed to ensure that the ACI is only used for the burning of trees, clean lumber, and brush from land-clearing.
- b. Within 45 days, submit written certification to demonstrate compliance with a.

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Amanda Diaz, Enforcement Division, Enforcement Team 4, MC R-12, (713) 422-8912; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** The Honorable Eloy Vera, Starr County Judge, Starr County, 100 North Farm-to-Market Road 3167, Suite 202, Rio Grande City, Texas 78539

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

## TCEQ

<b>DATES</b>	<b>Assigned</b>	15-Apr-2019	<b>Screening</b>	22-Apr-2019	<b>EPA Due</b>	
	<b>PCW</b>	12-Apr-2021				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Starr County				
<b>Reg. Ent. Ref. No.</b>	RN105864557				
<b>Facility/Site Region</b>	15-Harlingen	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	57606	<b>No. of Violations</b>	6
<b>Docket No.</b>	2019-0587-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Amanda Diaz
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$14,250**

### 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%** Adjustment **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustments for compliance history.

**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 **\$2,632**  
 Estimated Cost of Compliance **\$9,269**  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$14,250**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$14,250**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$14,250**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$2,850**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$11,400**

**Screening Date** 22-Apr-2019

**Docket No.** 2019-0587-AIR-E

**PCW**

**Respondent** Starr County

*Policy Revision 4 (April 2014)*

**Case ID No.** 57606

*PCW Revision March 26, 2014*

**Reg. Ent. Reference No.** RN105864557

**Media** Air

**Enf. Coordinator** Amanda Diaz

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Number	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 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%
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 adjustments for compliance history.

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

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 0%

**Screening Date** 22-Apr-2019  
**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air

**Docket No.** 2019-0587-AIR-E

**PCW**

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

**Enf. Coordinator** Amanda Diaz  
**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code §§ 122.143(4) and 122.144(1), Federal Operating Permit ("FOP") No. O3351/General Operating Permit ("GOP") No. 518, Terms and Conditions ("TC") No. (b)(9)(A)(iii)(I), and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to conduct quarterly visible emissions observations. Specifically, the Respondent did not conduct visible emissions observations of the air curtain incinerator ("ACI") that was in operation during the first, second, third, and fourth quarters of 2018.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				3.0%
	Potential			x	

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

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** \$24,250

\$750

**Violation Events**

Number of Violation Events 4 364 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$3,000

Four single events are recommended for the four missed quarterly observations.

**Good Faith Efforts to Comply**

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

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

**Violation Subtotal** \$3,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$1,067

**Violation Final Penalty Total** \$3,000

**This violation Final Assessed Penalty (adjusted for limits)** \$3,000

## Economic Benefit Worksheet

**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	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	5-Feb-2019	27-Sep-2021	2.64	\$33	n/a	\$33

**Notes for DELAYED costs**

Estimated cost to begin conducting quarterly visible emissions observations of the ACI. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)	\$1,019	31-Dec-2018	22-Apr-2019	0.31	\$15	\$1,019	\$1,034

**Notes for AVOIDED costs**

Estimated avoided costs plus accrued interest to conduct quarterly visible emissions observations (\$250/quarter, four quarters plus \$19 interest that began accruing on the last day of the first, second, and third quarter of 2018). The Date Required is the last day monitoring could have been conducted for the fourth quarter of 2018 and the Final Date is the screening date.

**Approx. Cost of Compliance**

\$1,269

**TOTAL**

\$1,067

**Screening Date** 22-Apr-2019  
**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Enf. Coordinator** Amanda Diaz

**Docket No.** 2019-0587-AIR-E

**PCW**

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

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code §§ 101.20(1) and 122.143(4), 40 Code of Federal Regulations § 60.8, FOP No. O3351/GOP No. 518, TC No. (b)(15)(B)(iii), and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to conduct an annual performance test no more than 12 calendar months following the date of the previous test. Specifically, an annual performance test for the ACI was required to be performed by January 7, 2019, but was not performed.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5.0%
	Potential		x		

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0.0%
Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.					

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 105 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,250

One single event is recommended.

**Good Faith Efforts to Comply**

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	

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

**Violation Subtotal** \$1,250

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$287

**Violation Final Penalty Total** \$1,250

**This violation Final Assessed Penalty (adjusted for limits)** \$1,250

## Economic Benefit Worksheet

**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	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	5-Feb-2019	27-Sep-2021	2.64	\$33	n/a	\$33

**Notes for DELAYED costs**

Estimated cost to conduct a performance test of the ACI. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

### Avoided Costs

#### ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs	\$250	7-Jan-2019	22-Apr-2019	0.29	\$4	\$250	\$254
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Estimated avoided costs to conduct annual performance testing of the ACI. The Date Required is the date the annual performance test was due and the Final Date is the screening date.

**Approx. Cost of Compliance**

\$500

**TOTAL**

\$287

**Screening Date** 22-Apr-2019  
**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Enf. Coordinator** Amanda Diaz

**Docket No.** 2019-0587-AIR-E

**PCW**

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

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(C), FOP No. O3351/GOP No. 518, TC No. (b)(3)(C)(ii)(III), and Tex. Health & Safety Code § 382.085(b)

**Violation Description**

Failed to submit a deviation report no later than 30 days after the end of each reporting period. Specifically, the Respondent did not submit deviation reports for the January 7, 2017 through July 6, 2017, July 7, 2017 through January 6, 2018, January 7, 2018 through July 6, 2018, and July 7, 2018 through January 6, 2019 reporting periods, but a deviation report should have been submitted by August 5, 2017 to report the deviations for failing to submit the permit compliance certification ("PCC") and failing to conduct quarterly visible emissions observations; by February 5, 2018 to report the deviation for failing to conduct quarterly visible emissions observations; by August 5, 2018 to report the deviations for failing to submit the PCC and failing to conduct quarterly visible emissions observations; and by February 5, 2019, respectively, to report the deviations for failing to conduct quarterly visible emissions observations and failing to submit a deviation report for the January 7, 2018 through July 6, 2018 reporting period.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%

100% of the rule requirement was not met.

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 4 625 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$5,000

Four single events are recommended for the four missing reports.

**Good Faith Efforts to Comply**

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	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** \$518

**Violation Final Penalty Total** \$5,000

**This violation Final Assessed Penalty (adjusted for limits)** \$5,000

## Economic Benefit Worksheet

**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$1,500	5-Aug-2017	27-Sep-2021	4.15	\$311	n/a	\$311
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	5-Aug-2017	27-Sep-2021	4.15	\$207	n/a	\$207

#### Notes for DELAYED costs

Estimated cost to submit deviation reports for the January 7, 2017 through July 6, 2017, July 7, 2017 through January 6, 2018, January 7, 2018 through July 6, 2018, and July 7, 2018 through January 6, 2019 reporting periods to report the missing deviations (\$1,000) and to implement measures and/or procedures designed to ensure that the deviation reports are submitted in a timely manner (\$1,500). The Dates Required are the date the first deviation report was due and the Final Dates are the estimated dates of compliance.

### Avoided Costs

#### ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

**TOTAL**

\$518

**Screening Date** 22-Apr-2019  
**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Enf. Coordinator** Amanda Diaz

**Docket No.** 2019-0587-AIR-E

**PCW**

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

**Violation Number** 4  
**Rule Cite(s)**

30 Tex. Admin. Code §§ 122.143(4) and 122.146(1) and (2), FOP No. O3351/GOP No. 518, TC Nos. (b)(3)(D)(i) and (ii), and Tex. Health & Safety Code § 382.085(b)

**Violation Description**

Failed to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance and failed to submit a PCC no later than 30 days after the end of the certification period. Specifically, the PCCs for the January 7, 2017 through January 6, 2018 and the January 7, 2018 through January 6, 2019 certification periods were due by February 5, 2018 and February 5, 2019, respectively, but were not submitted.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

**Percent** 0.0%

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

**Percent** 5.0%

Matrix Notes

100% of the rule requirement was not met.

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 2 441 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$2,500

Two single events are recommended for the two missing PCCs.

**Good Faith Efforts to Comply**

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	x

Notes

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

**Violation Subtotal** \$2,500

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$364

**Violation Final Penalty Total** \$2,500

**This violation Final Assessed Penalty (adjusted for limits)** \$2,500

## Economic Benefit Worksheet

**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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	5-Feb-2018	27-Sep-2021	3.64	\$273	n/a	\$273
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	5-Feb-2018	27-Sep-2021	3.64	\$91	n/a	\$91

**Notes for DELAYED costs**

Estimated costs to submit the PCCs for the January 7, 2017 through January 6, 2018 and the January 7, 2018 through January 6, 2019 certification periods (\$500) and to implement measures and/or procedures designed to ensure that the PCCs are submitted in a timely manner (\$1,500). The Dates Required are the date the first PCC was due. The Final Dates are the estimated dates of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$2,000

**TOTAL** \$364

**Screening Date** 22-Apr-2019  
**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Enf. Coordinator** Amanda Diaz

**Docket No.** 2019-0587-AIR-E

**PCW**

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

**Violation Number** 5

**Rule Cite(s)** 30 Tex. Admin. Code §§ 106.496(f)(2) and 122.143(4), Permit by Rule ("PBR")  
 Registration No. 91967L002, FOP No. O3351/GOP No. 518, TC No. (b)(8)(B)(vi) and  
 (b)(8)(D), and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to maintain records for the disposal of ash generated from the ACI.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%

100% of the rule requirement was not met.

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 76 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,250

One single event is recommended.

**Good Faith Efforts to Comply**

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	x

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

**Violation Subtotal** \$1,250

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$198

**Violation Final Penalty Total** \$1,250

**This violation Final Assessed Penalty (adjusted for limits)** \$1,250

## Economic Benefit Worksheet

**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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	\$1,500	5-Feb-2019	27-Sep-2021	2.64	\$198	n/a	\$198
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to begin maintaining records for the disposal of ash generated from the ACI. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$198

**Screening Date** 22-Apr-2019  
**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Enf. Coordinator** Amanda Diaz

**Docket No.** 2019-0587-AIR-E

**PCW**

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

**Violation Number** 6

**Rule Cite(s)** 30 Tex. Admin. Code §§ 106.496(a) and 122.143(4), PBR Registration No. 91967L002, FOP No. O3351/GOP No. 518, Qualification Criteria No. (a)(5) and TC No. (b)(8)(B)(vi), and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to use the ACI to only burn trees, clean lumber, and brush from land-clearing. Specifically, On February 5, 2019, TCEQ staff observed metal materials, glass bottles, cable wiring, sheet metal, and other hardware items in the ash inside the ACI.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	5.0%
	Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0.0%

**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** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 1 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,250

One single event is recommended.

**Good Faith Efforts to Comply**

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	x

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

**Violation Subtotal** \$1,250

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$198

**Violation Final Penalty Total** \$1,250

**This violation Final Assessed Penalty (adjusted for limits)** \$1,250

## Economic Benefit Worksheet

**Respondent** Starr County  
**Case ID No.** 57606  
**Reg. Ent. Reference No.** RN105864557  
**Media** Air  
**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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				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)	\$1,500	5-Feb-2019	27-Sep-2021	2.64	\$198	n/a	\$198

#### Notes for DELAYED costs

Estimated cost to implement measures and/or and procedures designed to ensure that the ACI is only used for the burning of trees, clean lumber, and brush from land-clearing. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

#### ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$198

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

Compliance History Report for CN601141146, RN105864557, Rating Year 2018 which includes Compliance History (CH) components from September 1, 2013, through August 31, 2018.

**Customer, Respondent, or Owner/Operator:** CN601141146, Starr County **Classification:** SATISFACTORY **Rating:** 2.80

**Regulated Entity:** RN105864557, FIREBOX MODEL S-527 **Classification:** SATISFACTORY **Rating:** 14.00

**Complexity Points:** 1 **Repeat Violator:** NO

**CH Group:** 11 - Waste Management (Excluding Landfills)

**Location:** 4548 OLD CHARCO BLANCO RD, RIO GRANDE CITY, STARR COUNTY, TX, 78582

**TCEQ Region:** REGION 15 - HARLINGEN

## ID Number(s):

**AIR NEW SOURCE PERMITS REGISTRATION** 91697L003 **AIR NEW SOURCE PERMITS AFS NUM** 4877702082  
**AIR NEW SOURCE PERMITS ACCOUNT NUMBER** 960378V **AIR NEW SOURCE PERMITS REGISTRATION** 156758  
**AIR OPERATING PERMITS PERMIT** 3351

**Compliance History Period:** September 01, 2013 to August 31, 2018 **Rating Year:** 2018 **Rating Date:** 09/01/2018

**Date Compliance History Report Prepared:** May 08, 2019

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** May 08, 2014 to May 08, 2019

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

**Name:** Carol McGrath

**Phone:** (210) 403-4063

## 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

## 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:

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

## **Component Appendices**

### **Appendix A**

#### **All NOV's Issued During Component Period 5/8/2014 and 5/8/2019**

1	Date:	08/31/2016	(1331201)	Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	30 TAC Chapter 106, SubChapter V 106.496(h)(4)(D) 30 TAC Chapter 116, SubChapter B 116.115(c) 5C THSC Chapter 382 382.085(b)			
	Description:	Failure of the holder of permits, special permits, standard permits, and special exemptions to comply with all special conditions contained in the permit document.			
				Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THSC Chapter 382 382.085(b) GOP 518 (b) (13) (A) & (b) (13) (B) OP			
	Description:	Failure of the permit holder to comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.			
				Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THSC Chapter 382 382.085(b) GOP 518 T&C (b) (14) (A) (ii) OP			
	Description:	Failure of the permit holder to comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.			
				Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THSC Chapter 382 382.085(b) GOP 518 T&C (b) (14) (B) (i) OP			
	Description:	Failure of the regulated entity to ensure the permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.			
				Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THSC Chapter 382 382.085(b) GOP 518 T&C (16) (A) (B) OP			
	Description:	Failure of the regulated entity to ensure the permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.			
				Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	GOP 518 (b) (4) (C) (ii) OP			
	Description:	Failure of the regulated entity to submit a deviation report no later than 30 days after the end of each reporting period.			
				Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	30 TAC Chapter 122, SubChapter B 122.146(1) 5C THSC Chapter 382 382.085(b) GOP 518 (b) (4) (D) OP			
	Description:	Failure of the regulated entity to certify compliance with the terms and condition of the permit for a least each 12-month period following initial permit issuance.			
				Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	3351, GOP 518 (b)(12)(B)(ii) PERMIT			

Description: Failure of the regulated entity holder of permits, special permits, standard permits, and special exemptions to comply with all special conditions contained in the permit document.

2\*

Date: 12/08/2017 (1415501)

Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
GOP 518 (b) (13) (A) & (b) (13) (B) OP

Description: Failure of the permit holder to comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.

Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
GOP 518 T&C (b) (14) (A) (ii) OP

Description: Failure of the permit holder to comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.

Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
GOP 518 T&C (b) (14) (B) (i) OP

Description: Failure of the regulated entity to ensure the permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.

Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
5C THSC Chapter 382 382.085(b)  
GOP 518 T&C (16) (A) (B) OP

Description: Failure of the regulated entity to ensure the permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.

Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: GOP 518 (b) (4) (C) (ii) OP

Description: Failure of the regulated entity to submit a deviation report no later than 30 days after the end of each reporting period.

Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 122, SubChapter B 122.146(1)  
5C THSC Chapter 382 382.085(b)  
GOP 518 (b) (4) (D) OP

Description: Failure of the regulated entity to certify compliance with the terms and condition of the permit for a least each 12-month period following initial permit issuance.

Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: 3351, GOP 518 (b)(12)(B)(ii) PERMIT

Description: Failure of the regulated entity holder of permits, special permits, standard permits, and special exemptions to comply with all special conditions contained in the permit document.

\* NOV's applicable for the Compliance History rating period 9/1/2013 to 8/31/2018

## Appendix B

### All Investigations Conducted During Component Period May 08, 2014 and May 08, 2019

Item 1	August 31, 2016**	(1331201) For Informational Purposes Only
Item 2	December 07, 2017**	(1415501) For Informational Purposes Only
Item 3	February 12, 2018**	(1467591) For Informational Purposes Only
Item 4	April 12, 2019	(1549628) For Informational Purposes Only

\* No violations documented during this investigation

\*\*Investigation applicable for the Compliance History Rating period between 09/01/2013 and 08/31/2018.

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
STARR COUNTY  
RN105864557**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2019-0587-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 Starr County (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates an air curtain incinerator ("ACI") located at 4548 Old Charco Blanco Road in Rio Grande City, Starr County, Texas (the "Site"). The Site consists or consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$14,250 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$11,400 of the penalty and \$2,850 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. 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). 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.

6. 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 Order.
7. 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.
8. 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.

## II. ALLEGATIONS

During an investigation conducted on February 5, 2019, an investigator documented that the Respondent:

1. Failed to conduct quarterly visible emissions observations, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.144(1), Federal Operating Permit ("FOP") No. O3351/General Operating Permit ("GOP") No. 518, Terms and Conditions ("TC") No. (b)(9)(A)(iii)(I), and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent did not conduct visible emissions observations of the ACI that was in operation during the first, second, third, and fourth quarters of 2018.
2. Failed to conduct an annual performance test no more than 12 calendar months following the date of the previous test, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS § 60.8, FOP No. O3351/GOP No. 518, TC No. (b)(15)(B)(iii), and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, an annual performance test for the ACI was required to be performed by January 7, 2019, but was not performed.
3. Failed to submit a deviation report no later than 30 days after the end of each reporting period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C), FOP No. O3351/GOP No. 518, TC No. (b)(3)(C)(ii)(III), and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent did not submit deviation reports for the January 7, 2017 through July 6, 2017, July 7, 2017 through January 6, 2018, January 7, 2018 through July 6, 2018, and July 7, 2018 through January 6, 2019 reporting periods, but a deviation report should have been submitted by August 5, 2017 to report the deviations for failing to submit the permit compliance certification ("PCC") and failing to conduct quarterly visible emissions observations; by February 5, 2018 to report the deviation for failing to conduct quarterly visible emissions observations; by August 5, 2018 to report the deviations for failing to submit the PCC and failing to conduct quarterly visible emissions observations; and by February 5, 2019, respectively, to report the deviations for failing to conduct quarterly visible emissions observations and failing to submit a deviation report for the January 7, 2018 through July 6, 2018 reporting period.

4. Failed to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance and failed to submit a PCC no later than 30 days after the end of the certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(1) and (2), FOP No. O3351/GOP No. 518, TC Nos. (b)(3)(D)(i) and (ii), and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the PCCs for the January 7, 2017 through January 6, 2018 and the January 7, 2018 through January 6, 2019 certification periods were due by February 5, 2018 and February 5, 2019, respectively, but were not submitted.
5. Failed to maintain records for the disposal of ash generated from the ACI, in violation of 30 TEX. ADMIN. CODE §§ 106.496(f)(2) and 122.143(4), Permit by Rule ("PBR") Registration No. 91967L002, FOP No. O3351/GOP No. 518, TC No. (b)(8)(B)(vi) and (b)(8)(D), and TEX. HEALTH & SAFETY CODE § 382.085(b).
6. Failed to use the ACI to only burn trees, clean lumber, and brush from land-clearing, in violation of 30 TEX. ADMIN. CODE §§ 106.496(a) and 122.143(4), PBR Registration No. 91967L002, FOP No. O3351/GOP No. 518, Qualification Criteria No. (a)(5) and TC No. (b)(8)(B)(vi), and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, on February 5, 2019, TCEQ staff observed metal materials, glass bottles, cable wiring, sheet metal, and other hardware items in the ash inside the ACI.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this 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. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Starr County, Docket No. 2019-0587-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 undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order:
    - i. Begin conducting quarterly visible emissions observations of the ACI;
    - ii. Conduct a performance test of the ACI;

- iii. Submit the deviation report for the January 7, 2017 through July 6, 2017 reporting period to report the deviations for failing to submit the PCC and failing to conduct quarterly visible emissions observations;
  - iv. Submit the deviation report for the July 7, 2017 through January 6, 2018 reporting period to report the deviation for failing to conduct quarterly visible emissions observations;
  - v. Submit the deviation report for the January 7, 2018 through July 6, 2018 reporting period to report the deviations for failing to submit the PCC and failing to conduct quarterly visible emissions observations;
  - vi. Submit the deviation report for the July 7, 2018 through January 6, 2019 reporting period to report the deviations for failing to conduct quarterly visible emissions observations and failing to submit a deviation report for the January 7, 2018 through July 6, 2018 reporting period;
  - vii. Implement measures and/or procedures designed to ensure that the deviation reports are submitted in a timely manner;
  - viii. Submit the PCCs for the January 7, 2017 through January 6, 2018 and the January 7, 2018 through January 6, 2019 certification periods;
  - ix. Implement measures and/or procedures designed to ensure that the PCCs are submitted in a timely manner;
  - x. Begin maintaining records for the disposal of ash generated from the ACI; and
  - xi. Implement measures and/or and procedures designed to ensure that the ACI is only used for the burning of trees, clean lumber, and brush from land-clearing.
- b. Within 45 days after the effective date of this Order, submit written certification, 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 signed by the 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 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  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

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 the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order
5. If the 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, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this 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 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This 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 Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This 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.

9. 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



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

\_\_\_\_\_  
Date

1/25/2022

\_\_\_\_\_  
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, 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 13, 2021

\_\_\_\_\_  
Date

**Eloy Vera**

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Starr County

**Starr County Judge**

\_\_\_\_\_  
Title

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

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