

Executive Summary – Enforcement Matter – Case No. 60459
Miller Family Services, Inc.
RN105511190
Docket No. 2021-0367-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Combest-Miller Mortuary and Crematory Services, 202 Avenue Q, Lubbock, Lubbock County

Type of Operation:

Crematory

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: August 27, 2021

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,752

Amount Deferred for Expedited Settlement: \$1,750

Total Paid to General Revenue: \$7,002

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): November 11, 2020

Complaint Information: Alleged the Respondent had malfunctioning equipment and was creating smoke that was over their allowed opacity limit.

Date(s) of Investigation: December 4, 2020 through December 18, 2020

Date(s) of NOE(s): February 17, 2021

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Docket No. 2021-0367-AIR-E

Violation Information

1. Failed to submit an initial notification no later than 24 hours after the discovery of an excess opacity event. Specifically, the initial notification for the excess opacity event on November 11, 2020 was due by November 12, 2020 at 11:47 a.m. but was not submitted, the initial notification for the excess opacity event on November 16, 2020 was due by November 17, 2020 at 3:30 p.m. but was not submitted, the initial notification for the excess opacity event on December 3, 2020 was due by December 4, 2020 at 11:09 a.m. but was not submitted, and the initial notification for the excess opacity event on January 19, 2021 was due by January 20, 2021 at 10:04 a.m. but was not submitted [30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

2. Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0 percent ("%") averaged over a six-minute period. Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on November 11, 2020 at 11:47 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE § 106.494(b)(2)(C), Permit by Rule ("PBR") Registration No. 84898, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

3. Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period. Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on November 16, 2020 at 3:30 p.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE § 106.494(b)(2)(C), PBR Registration No. 84898, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

4. Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period. Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on December 3, 2020 at 11:09 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE

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Docket No. 2021-0367-AIR-E

§ 106.494(b)(2)(C), PBR Registration No. 84898, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

5. Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period. Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on January 19, 2021 at 10:04 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE § 106.494(b)(2)(C), PBR Registration No. 84898, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On February 5, 2021, the Respondent adjusted the air and gas on the cremation burner and after burner, adjusted the air actuator, and repaired the floor and side walls of the loading chamber in order to prevent the recurrence of excess opacity events due to the same or similar causes as the excess opacity events that occurred on November 11, 2020, November 16, 2020, December 3, 2020, and January 19, 2021 and to comply with the opacity limit for the Cremation Chamber.

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

- i. Submit the initial notifications for the excess opacity events that occurred on November 11, 2020, November 16, 2020, December 3, 2020, and January 19, 2021; and
- ii. Implement measures and/or procedures designed to ensure that the initial notifications for reportable excess opacity events are submitted in a timely manner.

b. Within 45 days, submit written certification to demonstrate compliance with a.

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Miller Family Services, Inc.
RN105511190
Docket No. 2021-0367-AIR-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Margarita Dennis, Enforcement Division,
Enforcement Team 5, MC R-04, (817) 588-5892; Michael Parrish, Enforcement
Division, MC 219, (512) 239-2548

Respondent: Matthew Miller, General Manager, Miller Family Services, Inc., 202
Avenue Q, Lubbock, Texas 79415-4000

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	24-Feb-2021	Screening	4-Mar-2021	EPA Due	
	PCW	21-Apr-2021				

RESPONDENT/FACILITY INFORMATION

Respondent	Miller Family Services, Inc.				
Reg. Ent. Ref. No.	RN105511190				
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	60459	No. of Violations	5
Docket No.	2021-0367-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Margarita Dennis
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes	No adjustments due to Compliance History.
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$1,248
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$364	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$22,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,752
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$8,752
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,752
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DEFERRAL	20.0%	Reduction	Adjustment	-\$1,750
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$7,002
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Screening Date	4-Mar-2021	Docket No.	2021-0367-AIR-E	PCW
Respondent	Miller Family Services, Inc.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	60459			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN105511190			
Media	Air			
Enf. Coordinator	Margarita Dennis			

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)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustments due to 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 4-Mar-2021
Respondent Miller Family Services, Inc.
Case ID No. 60459
Reg. Ent. Reference No. RN105511190
Media Air
Enf. Coordinator Margarita Dennis

Docket No. 2021-0367-AIR-E

PCW

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

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 101.201(e) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit an initial notification no later than 24 hours after the discovery of an excess opacity event. Specifically, the initial notification for the excess opacity event on November 11, 2020 was due by November 12, 2020 at 11:47 a.m. but was not submitted, the initial notification for the excess opacity event on November 16, 2020 was due by November 17, 2020 at 3:30 p.m. but was not submitted, the initial notification for the excess opacity event on December 3, 2020 was due by December 4, 2020 at 11:09 a.m. but was not submitted, and the initial notification for the excess opacity event on January 19, 2021 was due by January 20, 2021 at 10:04 a.m. but was not submitted.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor		
		x				
					Percent	5.0%
Matrix Notes	100% of the rule requirements were not met.					

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 4 112 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$5,000

Four single events are recommended (one event for each notification).

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 \$128

Violation Final Penalty Total \$5,000

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

Economic Benefit Worksheet

Respondent Miller Family Services, Inc.
Case ID No. 60459
Reg. Ent. Reference No. RN105511190
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	\$1,500	12-Nov-2020	21-Nov-2021	1.02	\$77	n/a	\$77
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	12-Nov-2020	21-Nov-2021	1.02	\$51	n/a	\$51

Notes for DELAYED costs

Estimated costs to submit the initial notifications for the excess opacity events that occurred on November 11, 2020, November 16, 2020, December 3, 2020, and January 19, 2021 (\$250 per notification x four missed notifications) and to implement measures and/or procedures designed to ensure that the initial notifications for reportable excess opacity events are submitted in a timely manner (\$1,500). Dates Required are the date the initial notification was due. 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

\$128

Screening Date	4-Mar-2021	Docket No.	2021-0367-AIR-E	PCW
Respondent	Miller Family Services, Inc.	<i>Policy Revision 4 (April 2014)</i>		
Case ID No.	60459	<i>PCW Revision March 26, 2014</i>		
Reg. Ent. Reference No.	RN105511190			
Media	Air			
Enf. Coordinator	Margarita Dennis			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 106.494(b)(2)(C), Permit by Rule ("PBR") Registration No. 84898, and Tex. Health & Safety Code § 382.085(b)			
Violation Description	<p>Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0 percent ("%") averaged over a six-minute period. Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on November 11, 2020 at 11:47 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 Tex. Admin. Code § 101.222.</p>			
Base Penalty			\$25,000	

>> Environmental, Property and Human Health Matrix				
OR		Harm		
	Release	Major	Moderate	Minor
	Actual			x
	Potential			
			Percent	5.0%

>> Programmatic Matrix					
Matrix Notes		Falsification	Major	Moderate	Minor
			Percent	0.0%	
<p>Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.</p>					
Adjustment			\$23,750		

Violation Events			
Number of Violation Events	1	Number of violation days	1
daily			
weekly			
monthly			
quarterly	x		
semiannual			
annual			
single event			
Violation Base Penalty		\$1,250	
<p>One quarterly event is recommended.</p>			

Good Faith Efforts to Comply		25.0%	Reduction	\$312
Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer				
Extraordinary				
Ordinary	x			
N/A				
Notes	<p>The Respondent achieved compliance on February 5, 2021, prior to the Notice of Enforcement ("NOE") dated February 17, 2021.</p>			
Violation Subtotal			\$938	

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$236	Violation Final Penalty Total	\$938
This violation Final Assessed Penalty (adjusted for limits)		\$938	

Economic Benefit Worksheet

Respondent Miller Family Services, Inc.
Case ID No. 60459
Reg. Ent. Reference No. RN105511190
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)	\$20,000	11-Nov-2020	5-Feb-2021	0.24	\$236	n/a	\$236

Notes for DELAYED costs

Estimated cost to adjust the air and gas on the cremation burner and after burner, adjust the air actuator, and repair the floor and side walls of the loading chamber in order to prevent the recurrence of excess opacity events due to the same or similar causes as the excess opacity events that occurred on November 11, 2020, November 16, 2020, December 3, 2020, and January 19, 2021 and to comply with the opacity limit for the Cremation Chamber. Date Required is the date the first excess opacity event occurred. Final Date is the 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

\$20,000

TOTAL

\$236

Screening Date 4-Mar-2021
Respondent Miller Family Services, Inc.
Case ID No. 60459
Reg. Ent. Reference No. RN105511190
Media Air
Enf. Coordinator Margarita Dennis

Docket No. 2021-0367-AIR-E

PCW

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

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 106.494(b)(2)(C), PBR Registration No. 84898, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period. Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on November 16, 2020 at 3:30 p.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 Tex. Admin. Code § 101.222.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 1 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended.

Good Faith Efforts to Comply

25.0%

Reduction \$312

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

Extraordinary	
Ordinary	x
N/A	

Notes

The Respondent achieved compliance on February 5, 2021, prior to the NOE dated February 17, 2021.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$938

This violation Final Assessed Penalty (adjusted for limits) \$938

Economic Benefit Worksheet

Respondent Miller Family Services, Inc.
Case ID No. 60459
Reg. Ent. Reference No. RN105511190
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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See the Economic Benefit for Violation No. 2.

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

\$0

TOTAL

\$0

Screening Date 4-Mar-2021
Respondent Miller Family Services, Inc.
Case ID No. 60459
Reg. Ent. Reference No. RN105511190
Media Air
Enf. Coordinator Margarita Dennis

Docket No. 2021-0367-AIR-E

PCW

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 106.494(b)(2)(C), PBR Registration No. 84898, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period. Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on December 3, 2020 at 11:09 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 Tex. Admin. Code § 101.222.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

1 **Number of violation days**

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended.

Good Faith Efforts to Comply

25.0%

Reduction \$312

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

Extraordinary	
Ordinary	x
N/A	

Notes The Respondent achieved compliance on February 5, 2021, prior to the NOE dated February 17, 2021.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$938

This violation Final Assessed Penalty (adjusted for limits) \$938

Economic Benefit Worksheet

Respondent Miller Family Services, Inc.
Case ID No. 60459
Reg. Ent. Reference No. RN105511190
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				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

See the Economic Benefit for Violation No. 2.

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

\$0

TOTAL

\$0

Screening Date 4-Mar-2021 Respondent Miller Family Services, Inc. Case ID No. 60459 Reg. Ent. Reference No. RN105511190 Media Air Enf. Coordinator Margarita Dennis	Docket No. 2021-0367-AIR-E	PCW <i>Policy Revision 4 (April 2014)</i> <i>PCW Revision March 26, 2014</i>
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Violation Number	5	Rule Cite(s)	
		30 Tex. Admin. Code § 106.494(b)(2)(C), PBR Registration No. 84898, and Tex. Health & Safety Code § 382.085(b)	
Violation Description		Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period. Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on January 19, 2021 at 10:04 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 Tex. Admin. Code § 101.222.	

Base Penalty	\$25,000
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>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes		Falsification	Major	Moderate	Minor	
					Percent	0.0%
Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.						

Adjustment	\$23,750
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	\$1,250
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Violation Events

Number of Violation Events	1	1	Number of violation days
daily			
weekly			
monthly			
quarterly		x	
semiannual			
annual			
single event			
Violation Base Penalty		\$1,250	

One quarterly event is recommended.	
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Good Faith Efforts to Comply

25.0%	Reduction	\$312
	<small>Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer</small>	
Extraordinary		
Ordinary	x	
N/A		
Notes	The Respondent achieved compliance on February 5, 2021, prior to the NOE dated February 17, 2021.	
Violation Subtotal		\$938

Economic Benefit (EB) for this violation

Estimated EB Amount	\$0
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Statutory Limit Test

Violation Final Penalty Total	\$938
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This violation Final Assessed Penalty (adjusted for limits)	\$938
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Economic Benefit Worksheet

Respondent Miller Family Services, Inc.
Case ID No. 60459
Reg. Ent. Reference No. RN105511190
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
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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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See the Economic Benefit for Violation No. 2.

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

\$0

TOTAL

\$0



Compliance History Report

Compliance History Report for CN603353715, RN105511190, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN603353715, Miller Family Services, Inc. **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN105511190, Combest-Miller Mortuary and Crematory Services **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 202 Avenue Q, Lubbock, Lubbock County, Texas 79415-4000

TCEQ Region: REGION 02 - LUBBOCK

ID Number(s):
AIR NEW SOURCE PERMITS REGISTRATION 84898

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: May 06, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 06, 2016 to May 06, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Margarita Dennis **Phone:** (817) 588-5892

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MILLER FAMILY SERVICES, INC.
RN105511190**

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

AGREED ORDER DOCKET NO. 2021-0367-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 Miller Family Services, Inc. (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 a crematory located at 202 Avenue Q in Lubbock, Lubbock 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 \$8,752 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$7,002 of the penalty and \$1,750 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.
9. The Executive Director recognizes that on February 5, 2021, the Respondent adjusted the air and gas on the cremation burner and after burner, adjusted the air actuator, and repaired the floor and side walls of the loading chamber in order to prevent the recurrence of excess opacity events due to the same or similar causes as the excess opacity events that occurred on November 11, 2020, November 16, 2020, December 3, 2020, and January 19, 2021 and to comply with the opacity limit for the Cremation Chamber.

II. ALLEGATIONS

During an investigation conducted from December 4, 2020 through December 18, 2020, an investigator documented that the Respondent:

1. Failed to submit an initial notification no later than 24 hours after the discovery of an excess opacity event, in violation of 30 TEX. ADMIN. CODE § 101.201(e) and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the initial notification for the excess opacity event on November 11, 2020 was due by November 12, 2020 at 11:47 a.m. but was not submitted, the initial notification for the excess opacity event on November 16, 2020 was due by November 17, 2020 at 3:30 p.m. but was not submitted, the initial notification for the excess opacity event on December 3, 2020 was due by December 4, 2020 at 11:09 a.m. but was not submitted, and the initial notification for the excess opacity event on January 19, 2021 was due by January 20, 2021 at 10:04 a.m. but was not submitted.
2. Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0 percent ("%") averaged over a six-minute period, in violation of 30 TEX. ADMIN. CODE § 106.494(b)(2)(C), Permit by Rule ("PBR") Registration No. 84898, and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on November 11, 2020 at 11:47 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222.

3. Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period, in violation of 30 TEX. ADMIN. CODE § 106.494(b)(2)(C), PBR Registration No. 84898, and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on November 16, 2020 at 3:30 p.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222.
4. Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period, in violation of 30 TEX. ADMIN. CODE § 106.494(b)(2)(C), PBR Registration No. 84898, and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on December 3, 2020 at 11:09 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222.
5. Failed to prevent an excess opacity event and failed to prevent the opacity of emissions from the incinerator from exceeding 5.0% averaged over a six-minute period, in violation of 30 TEX. ADMIN. CODE § 106.494(b)(2)(C), PBR Registration No. 84898, and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent experienced 100% opacity from the Cremation Chamber during an excess opacity event that began on January 19, 2021 at 10:04 a.m. Since the Respondent did not comply with the excess opacity event reporting requirements and the excess opacity event could have been avoided by better design and/or better operational and maintenance practices, the Respondent is precluded from asserting an affirmative defense under 30 TEX. ADMIN. CODE § 101.222.

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: Miller Family Services, Inc., Docket No. 2021-0367-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. Submit the initial notifications for the excess opacity events that occurred on November 11, 2020, November 16, 2020, December 3, 2020, and January 19, 2021; and
 - ii. Implement measures and/or procedures designed to ensure that the initial notifications for reportable excess opacity events are submitted in a timely manner.
 - 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
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3426

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

Date


For the Executive Director

12/30/2021

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.

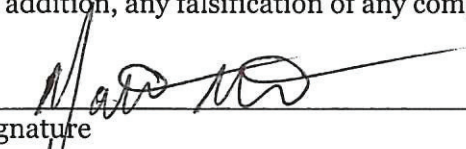
I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- 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

Date


Matt Miller
Name (Printed or typed)
Authorized Representative of
Miller Family Services, Inc.

Title

owner

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