

TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel

Thru: *MBC* Melissa Cordell, Assistant Deputy Director
Enforcement Division

From: Michael Parrish, Team Leader
Special Functions Team
NM for:

Date: January 6, 2023

Subject: **Supplemental Information**
January 11, 2023 Commission Agenda
Item No. 5 – Franklin County
Docket No. 2022-0370-AIR-E

Enclosed please find the following:

Supplemental Information:

- TCEQ Investigation Report # 1788619

Please do not hesitate to call Michael Parrish at (512) 239-2548 if you have any questions regarding this matter.

cc: Garrett Arthur, Public Interest Counsel
Melissa Schmidt, Public Interest Counsel
Gill Valls, Office of General Counsel
Katherine McKenzie, Agenda Coordinator, Litigation Division
Melissa Cordell, Assistant Deputy Director, Enforcement Division
Rebecca Margain-Nunez, Executive Assistant, Enforcement Division
Michael De La Cruz, Manager, Air Section, Enforcement Division
Amy Settemeyer, Deputy Director, Enforcement Division
Desmond Martin, Enforcement Coordinator Air Section, Enforcement Division

AIR CP_111415626_CP_20220106_Investigation_1788619_PDF
Texas Commission on Environmental Quality
Investigation Report

The TCEQ is committed to accessibility. If you need assistance in accessing this document, please contact oce@tceq.texas.gov

Customer: Franklin County
Customer Number: CN601270150

Regulated Entity Name: FRANKLIN COUNTY PRECINCT 3

Regulated Entity Number: RN111415626

Investigation # 1788619	Incident Numbers 375648
Investigator: MIGUEL GAONA	Site Classification
Conducted: 01/06/2022 -- 01/06/2022	No Industry Code Assigned
Program(s): AIR QUALITY NON PERMITTED VISIBLE EMISSIONS EVALUATOR LICENSING	
Investigation Type: Compliance Investigation	Location: 0.5 MI W ON FM 900 OFF HWY 37
Additional ID(s): R5111415626	

Address: 563 FM 900 W,
MT VERNON, TX , 75457

Local Unit: REGION 05 - TYLER
Activity Type(s): AIRCOMPL - AIR CMPL - AIR
COMPLAINT INV

Principal(s):

Role	Name
RESPONDENT	FRANKLIN COUNTY

Contact(s):

Role	Title	Name	Phone
NOE CONTACT	FRANKLIN COUNTY PRECINCT 3 COMMISSIONER	MR Charlie Emerson	

Other Staff Member(s):

Role	Name
QA Reviewer	KRISTEN THOMPSON
Investigator	GREGGORY ORR
Supervisor	MICHELLE BAETZ

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
AIR COMPLAINT INVESTIGATION	NOE

Investigation Comments:

I. INTRODUCTION

A. Introduction

On December 6, 2021, the Texas Commission on Environmental Quality (TCEQ) Region 5 Tyler office received an environmental complaint alleging that Franklin County Precinct 3 Commissioner Mr. Charlie Emerson approved

FRANKLIN COUNTY PRECINCT 3 - MT VERNON

1/6/2022 Inv. # - 1788619

Page 2 of 4

the tampering of emission controls on a Caterpillar skid loader Serial No. CAT0299DHDX201696/Model No. 299D2 Caterpillar. The equipment is located 563 FM 900 W, Mt. Vernon, Franklin County, Texas. This became incident No. 375648. The complaint was assigned to Mr. Miguel Gaona, TCEQ Environmental Investigator on December 6, 2021.

B. Daily Narrative

Due to the limited knowledge of Caterpillar emission controls, the investigator requested the assistance of Caterpillar Industry Representatives whose business unit looks after the Cat 299. The investigator discussed the matter with Mr. Christopher Thomas, Industry Technical Representative. Mr. Thomas informed the investigator that his team could meet the investigator on January 6, 2022, to conduct an onsite inspection of the unit. The investigator agreed to the inspection date.

On January 6, 2022, at approximately 1000 hours, TCEQ Environmental Investigators, Mr. Miguel Gaona and Mr. Gregg Orr met Caterpillar Representatives at 563 Farm Market Road 900 W, Mt. Vernon (Franklin County) Texas. Prior to arriving at the location, the investigator conducted an area odor and visible emissions survey of the surrounding area to determine if there were any significant odors or visible emissions emanating from the location. During the survey, no visible emissions or odors were detected. At the time of the survey the sky was partly cloudy with a slight wind blowing out of the north. The weather conditions at the time of the investigation, per CAMS 82 in Tyler, were as follows: Wind speed 9.4 mph, wind direction 344 degrees, ambient temperature 43.7 degrees F.

At approximately 1015 hours, the team proceeded to the yard and spoke with a county employee. The investigator informed the employee of the reason of the visit and requested to talk to a manager. The employee contacted Mr. Charlie Emerson by phone and informed him of the inspection. The employee informed the investigator that Mr. Emerson would be on his way to meet with the investigator. Within a few minutes Mr. Emerson arrived, and the investigator made the introductions and informed Mr. Emerson for the reason of the visit. The investigator asked for permission to inspect the unit in question. Mr. Emerson did not have any objections and gave his approval. The Caterpillar team started the diagnostic testing on the Cat 299D2 serial number DX201696. At approximately 1200 hours the Caterpillar team concluded the testing and informed the investigator that additional analysis on the codes would have to be conducted by the engineering department in order to provide the investigator with the final test results. The investigator informed Mr. Emerson of the status of the investigation and all testing was concluded for the day.

On January 10, 2022, Mr. Thomas e-mailed the investigator the results of the diagnostics (Attachment 1). In the email Mr. Thomas states that his team collected a product status report from the Machine electronic control module, the Engine Control Module (ECM), and the Diesel Exhaust Fluid (DEF) ECM. They also collected a 5-minute data log of several emissions channels captured at operating temperature at high idle, low load. Based on the following reasons, it appears that the electronic control modules have been altered from factory settings.

- The Logged Diagnostic and Event Codes cannot be retrieved from the DEF control module.
- The DPF Soot Load Percentage is showing as 4%. The lowest possible number is 19%.
- The DPF #1 Soot Mass is showing 0 grams. The lowest possible is 4 grams. The Soot Mass #1 are also Soot Mass #2 are also too low. Since the engine has accumulated 25 hours since the last soot regeneration, the soot loads should be much higher (close to 100% and 21 g) since it would be nearing when a regen is required due to the fuel burn requirement since last regeneration.
- The data log shows the EGR valve position to be 0% but the EGR command position is 40%.
- The data log shows the SCR inlet temp as a static value.

Based on the results of the report, there was a failure to maintain and operate Air Pollution Control Systems on the Cat 299D2 serial number DX201696. On February 2, 2022, the investigator contacted Mr. Emerson with the results of the inspection. The investigator informed Mr. Emerson that altering the electronic control modules on the Cat 299D2 from factory settings is a violation of 30 TAC 114.20(a) and he would receive a Notice of Enforcement (NOE). The investigator explained the NOE process and informed Mr. Emerson that he should discontinue altering the electronic control modules on his equipment. Mr. Emerson stated that he would comply with TCEQ's request. The investigator thanked Mr. Emerson for his cooperation and concluded the conversation.

C. Exit Interview

The Exit Interview was conducted by phone on February 2, 2022. Mr. Gaona e mailed the Exit Form to Mr.

FRANKLIN COUNTY PRECINCT 3 - MT VERNON

1/6/2022 Inv. # - 1788619

Page 3 of 4

Charlie Emerson on February 2, 2022 (see Attachment 2).

II. GENERAL FACILITY AND PROCESS INFORMATION

Process Description

Franklin County Precinct 3 is a government entity under the jurisdiction of Franklin County.

III. BACKGROUND

Franklin County (CN601270150) currently has a Compliance History Classification of Unclassified and a Rating of --. The Franklin County Precinct 3 (RN111415626) currently has a Compliance History Classification of N/A and a Rating of N/A. A copy of the Compliance History report has been attached to this report (Attachment 3).

A. Agreed Orders, Court Orders, and Other Compliance Agreements

There are no previous Agreed Orders, Court Orders, and Other Compliance Agreements documented for this site in the last five years.

B. Prior Compliance/Enforcement Issues

There are no previous violations of air quality regulations documented for this site in the last five years.

C. Complaints

Based on a review of the complaints database for the previous 5 years and the files, this is the first air complaint the Tyler Regional Office has received against this site.

IV. ADDITIONAL INFORMATION

A. Conclusions, Recommendations/Current Enforcement Issues

Based upon the results of this investigation, one violation was documented. On January 6, 2022, during an on-site complaint investigation, the TCEQ Region 5 - Tyler Office Air Investigator documented that the electronic control modules on the Cat 299D2 had been altered from factory settings resulting in decreased emissions control. 30 Texas Administrative Code (TAC) 114.20(a) states that any person owning or operating any motor vehicle or motor vehicle engine on which is installed or incorporated a system or device used to control emissions from the motor vehicle in compliance with federal motor vehicle rules shall maintain the system or device in good operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. Altering the electronic control modules on the Cat 299D2 from factory settings resulting in decreased emissions control, is a violation of 30 TAC 114.20(a).

B. Additional Issues

None.

V. LIST OF ATTACHMENTS

1. Caterpillar Summary of Engine Test Results
2. Exit Interview Form
3. Compliance History Report

NOE Date: 3/9/2022

**OUTSTANDING ALLEGED VIOLATION(S)
ASSOCIATED TO A NOTICE OF ENFORCEMENT**

Track Number: 805044

Compliance Due Date: To Be Determined

Violation Start Date: 12/6/2021

**30 TAC Chapter 114.20(a)
5C THSC Chapter 382.085(b)**

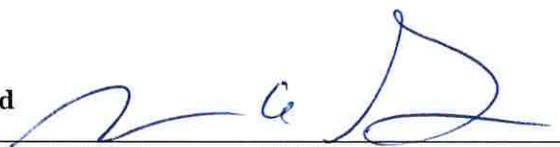
Alleged Violation:

Investigation: 1788619

Comment Date: 03/08/2022

Failure to maintain and operate Air Pollution Control Systems on the Cat 299D2 serial number DX201696.

On January 6, 2022, during an on-site complaint investigation, the TCEQ Region 5 - Tyler Office Air Investigator documented that the electronic control modules on the Cat 299D2 had been altered from factory settings resulting in decreased emissions control. 30 Texas Administrative Code (TAC) 114.20(a) states that any person owning or operating any motor vehicle or motor vehicle engine on which is installed or incorporated a system or device used to control emissions from the motor vehicle in compliance with federal motor vehicle rules shall maintain the system or device in good operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. Altering the electronic control modules on the Cat 299D2 from factory settings resulting in decreased emissions control, is a violation of 30 TAC 114.20(a).

Signed 
Environmental Investigator

Date 3/9/2022

Signed 
Supervisor

Date 3/9/2022

Attachments: (in order of final report submittal)

- Enforcement Action Request (EAR)
- Letter to Facility (specify type) : NDE
- Investigation Report
- Sample Analysis Results
- Manifests
- Notice of Registration

- Maps, Plans, Sketches
- Photographs
- Correspondence from the facility
- Other (specify) : Refer to attachments

Executive Summary – Enforcement Matter – Case No. 62142

Franklin County

RN111415626

Docket No. 2022-0370-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Franklin County Precinct 3, 563 Farm-to-Market Road 900 West, Mount Vernon,
Franklin County

Type of Operation:

Caterpillar Track Loader

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 12, 2022

Comments Received: No

Penalty Information

Total Penalty Assessed: \$11,250

Amount Deferred for Expedited Settlement: \$2,250

Total Paid to General Revenue: \$9,000

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): December 6, 2021

Complaint Information: Alleged emissions tampering at the facility.

Date(s) of Investigation: January 6, 2022

Date(s) of NOE(s): March 9, 2022

**Executive Summary – Enforcement Matter – Case No. 62142
Franklin County
RN111415626
Docket No. 2022-0370-AIR-E**

Violation Information

Failed to maintain the system or device used to control emissions from the motor vehicle in good operable condition. Specifically, TCEQ staff documented that the electronic control modules for the emissions system on the Caterpillar 299D2 Track Loader, Serial No. DX201696, were altered from the factory settings, resulting in decreased emissions control [30 TEX. ADMIN. CODE § 114.20(a) 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. Restore the factory settings for the electronic modules for the emission system for the Caterpillar 299D2 Track Loader, Serial No. DX201696; and

ii. Begin maintaining the system or device used to control emissions from the Caterpillar 299D2 Track Loader, Serial No. DX201696, in good operable condition and begin using the system or device used to control emissions at all times that the Caterpillar 299D2 Track Loader, Serial No. DX201696, is operated.

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

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Kate Dacy, Enforcement Division, Enforcement Team 2, MC 219, (512) 239-4593; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: The Honorable Charlie Emerson, Franklin County Precinct 3
Commissioner, Franklin County, 809 County Road 3055, Saltillo, Texas 75478

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	28-Mar-2022	Screening	29-Mar-2022	EPA Due	
	PCW	5-May-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	Franklin County
Reg. Ent. Ref. No.	RN111415626
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	62142	No. of Violations	1
Docket No.	2022-0370-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Kate Dacy
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,250
---	-------------------	-----------------

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 adjustment 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: \$148
 Estimated Cost of Compliance: \$3,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,250
-----------------------------	-----------------------	-----------------

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$11,250
-----------------------------	-----------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,250
-----------------------------------	-------------------------------	-----------------

DEFERRAL	20.0% Reduction	Adjustment	-\$2,250
-----------------	------------------------	-------------------	-----------------

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$9,000
------------------------	----------------

Screening Date 29-Mar-2022
Respondent Franklin County
Case ID No. 62142
Reg. Ent. Reference No. RN111415626
Media Air
Enf. Coordinator Kate Dacy

Docket No. 2022-0370-AIR-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment 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 29-Mar-2022
Respondent Franklin County
Case ID No. 62142
Reg. Ent. Reference No. RN111415626
Media Air
Enf. Coordinator Kate Dacy

Docket No. 2022-0370-AIR-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 114.20(a) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain the system or device used to control emissions from the motor vehicle in good operable condition. Specifically, TCEQ staff documented that the electronic control modules for the emissions system on the Caterpillar 299D2 Track Loader, Serial No. DX201696, were altered from the factory settings, resulting in decreased emissions control.

Base Penalty \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

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 this violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3 82 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three monthly events are recommended, from the January 6, 2022 investigation date to the March 29, 2022 screening date.

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 \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$148

Violation Final Penalty Total \$11,250

This violation Final Assessed Penalty (adjusted for limits) \$11,250

Economic Benefit Worksheet

Respondent Franklin County
Case ID No. 62142
Reg. Ent. Reference No. RN111415626
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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

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	6-Jan-2022	1-Jan-2023	0.99	\$74	n/a	\$74
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	6-Jan-2022	1-Jan-2023	0.99	\$74	n/a	\$74

Notes for DELAYED costs

Estimated costs to restore the factory settings for the electronic modules for the emission system for the Caterpillar 299D2 Track Loader, Serial No. DX201696, (\$1,500) and to begin maintaining the system or device used to control emissions from the Caterpillar 299D2 Track Loader, Serial No. DX201696, in good operable condition and begin using the system or device used to control emissions at all times that the Caterpillar 299D2 Track Loader, Serial No. DX201696, is operated (\$1,500). The Dates Required is the investigation date 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

\$3,000

TOTAL

\$148

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 CN601270150, RN111415626, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator:	CN601270150, Franklin County	Classification: UNCLASSIFIED	Rating: -----
Regulated Entity:	RN111415626, FRANKLIN COUNTY PRECINCT 3	Classification: NOT APPLICABLE	Rating: N/A
Complexity Points:	N/A	Repeat Violator:	N/A
CH Group:	14 - Other		
Location:	563 FARM-TO-MARKET ROAD 900 WEST NEAR MOUNT VERNON, FRANKLIN COUNTY, TEXAS		
TCEQ Region:	REGION 05 - TYLER		
ID Number(s):			
AIR QUALITY NON PERMITTED ID NUMBER	R5111415626		
Compliance History Period:	September 01, 2016 to August 31, 2021	Rating Year: 2021	Rating Date: 09/01/2021
Date Compliance History Report Prepared:	March 28, 2022		
Agency Decision Requiring Compliance History:	Enforcement		
Component Period Selected:	March 28, 2017 to March 28, 2022		
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.			
Name:	Kate Dacy	Phone:	(512) 239-4593

Site and Owner/Operator History:

- | | |
|--|----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | NO |
| 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
FRANKLIN COUNTY
RN111415626

§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2022-0370-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 Franklin 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 a Caterpillar Track Loader located at 563 Farm-to-Market Road 900 West, near Mount Vernon, Franklin 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 \$11,250 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$9,000 of the penalty and \$2,250 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 January 6, 2022, an investigator documented that the Respondent failed to maintain the system or device used to control emissions from the motor vehicle in good operable condition, in violation of 30 TEX. ADMIN. CODE § 114.20(a) and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, TCEQ staff documented that the electronic control modules for the emissions system on the Caterpillar 299D2 Track Loader, Serial No. DX201696, were altered from the factory settings, resulting in decreased emissions control.

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: Franklin County, Docket No. 2022-0370-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. Restore the factory settings for the electronic modules for the emission system for the Caterpillar 299D2 Track Loader, Serial No. DX201696; and

- ii. Begin maintaining the system or device used to control emissions from the Caterpillar 299D2 Track Loader, Serial No. DX201696, in good operable condition and begin using the system or device used to control emissions at all times that the Caterpillar 299D2 Track Loader, Serial No. DX201696, is operated.
- 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

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



11/7/2022

For the Executive Director

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.

Charlie Emerson

7-5-22

Signature

Date

CHARLIE EMERSON

COMMISSIONER PCT3

Name (Printed or typed)

Title

Authorized Representative of
Franklin County

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

809 CR 3055
SALTILLO, TX 75478