

Executive Summary – Enforcement Matter – Case No. 62297

City of Austin

RN103219127

Docket No. 2022-0515-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Nacogdoches Generating Facility, 499 County Road 988, Cushing, Nacogdoches County

Type of Operation:

Power plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 26, 2022

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,000

Amount Deferred for Expedited Settlement: \$1,800

Total Paid to General Revenue: \$7,200

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: March 15, 2022

Date(s) of NOE(s): April 29, 2022

Executive Summary – Enforcement Matter – Case No. 62297

City of Austin

RN103219127

Docket No. 2022-0515-AIR-E

Violation Information

Failed to comply with the maximum allowable emissions rate ("MAER"). Specifically, the Respondent exceeded the ammonia ("NH₃") MAER of 18.00 pounds per hour ("lbs/hr") by 3.40 lbs/hr for one hour on July 21, 2021 and by 3.10 lbs/hr for one hour on July 31, 2021 for the Bubbling Fluidized Bed Boiler, Emissions Point Number ("EPN") BFB-1, resulting in 6.50 pounds of unauthorized NH₃ emissions [30 TEX. ADMIN. CODE §§ 101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review ("NSR") Permit Nos. 77679 and PSDTX1061M1, Special Conditions No. 1, Federal Operating Permit No. O3455, General Terms and Conditions and Special Terms and Conditions No. 8, 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. Implement measures and/or procedures designed to comply with the NH₃ hourly MAER for the Bubbling Fluidized Bed Boiler, EPN BFB-1; or

ii. Submit an administratively complete permit amendment application for NSR Permit Nos. 77679 and PSDTX1061M1 to increase the NH₃ MAERs for EPN BFB-1.

b. If a permit amendment application is submitted, respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the amendment application for NSR Permit Nos. 77679 and PSDTX1061M1 by any deadline specified in writing.

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

d. If a permit amendment application is submitted, within 180 days, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate that the amendment for NSR Permit Nos. 77679 and PSDTX1061M1 has been obtained or operations have ceased until authorization is obtained.

Executive Summary – Enforcement Matter – Case No. 62297
City of Austin
RN103219127
Docket No. 2022-0515-AIR-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Yuliya Dunaway, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4077; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Nikole Jackson, Plant Manager, City of Austin, 4815 Mueller Boulevard, Austin, Texas 78723

Kathleen Garrett, Director of Environmental, Health, and Safety, City of Austin, 4815 Mueller Boulevard, Austin, Texas 78723

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	2-May-2022	Screening	4-May-2022	EPA Due	
	PCW	20-May-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Austin
Reg. Ent. Ref. No.	RN103219127
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	62297	No. of Violations	1
Docket No.	2022-0515-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Yuliya Dunaway
		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	\$7,500
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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	20.0%	Adjustment	Subtotals 2, 3, & 7	\$1,500
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Notes	Enhancement for one agreed order containing a denial of liability.
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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	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$767	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$10,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,000
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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	\$9,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,000
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DEFERRAL	20.0%	Reduction	Adjustment	-\$1,800
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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	\$7,200
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Screening Date 4-May-2022

Docket No. 2022-0515-AIR-E

PCW

Respondent City of Austin

Policy Revision 5 (January 28, 2021)

Case ID No. 62297

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN103219127

Media Air

Enf. Coordinator Yuliya Dunaway

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>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one agreed order containing a denial of liability.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 4-May-2022 **Docket No.** 2022-0515-AIR-E **PCW**
Respondent City of Austin *Policy Revision 5 (January 28, 2021)*
Case ID No. 62297 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN103219127
Media Air
Enf. Coordinator Yuliya Dunaway

Violation Number
Rule Cite(s) 30 Tex. Admin. Code §§ 101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Nos. 77679 and PSDTX1061M1, Special Conditions No. 1, Federal Operating Permit No. O3455, General Terms and Conditions and Special Terms and Conditions No. 8, and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to comply with the maximum allowable emissions rate ("MAER"). Specifically, the Respondent exceeded the ammonia ("NH3") MAER of 18.00 pounds per hour ("lbs/hr") by 3.40 lbs/hr for one hour on July 21, 2021 and by 3.10 lbs/hr for one hour on July 31, 2021 for the Bubbling Fluidized Bed Boiler, Emissions Point Number ("EPN") BFB-1, resulting in 6.50 pounds of unauthorized NH3 emissions.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	<input type="text" value="30.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes Human health or the environment 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

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

One monthly event is recommended for the instances of non-compliance that occurred on July 21, 2021 and July 31, 2021.

Good Faith Efforts to Comply Reduction

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

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

Violation Subtotal

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

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of Austin
Case ID No. 62297
Reg. Ent. Reference No. RN103219127
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)	\$10,000	21-Jul-2021	1-Feb-2023	1.53	\$767	n/a	\$767

Notes for DELAYED costs

Estimated cost to implement measures and/or procedures designed to comply with the NH3 hourly MAER for the Bubbling Fluidized Bed Boiler, EPN BFB-1. The Date Required is the first date of non-compliance 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

\$10,000

TOTAL

\$767

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 CN600135198, RN103219127, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN600135198, City of Austin **Classification:** SATISFACTORY **Rating:** 3.79
Regulated Entity: RN103219127, NACOGDOCHES GENERATING FACILITY **Classification:** SATISFACTORY **Rating:** 1.19
Complexity Points: 18 **Repeat Violator:** NO
CH Group: 06 - Electric Power Generation
Location: 499 COUNTY ROAD 988 NEAR CUSHING, NACOGDOCHES COUNTY, TEXAS
TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):

AIR OPERATING PERMITS PERMIT 3455 **AIR OPERATING PERMITS** ACCOUNT NUMBER NAA003C
AIR NEW SOURCE PERMITS PERMIT 77679 **AIR NEW SOURCE PERMITS** EPA PERMIT PSDTX1061
AIR NEW SOURCE PERMITS EPA PERMIT PSDTX1061M1 **AIR NEW SOURCE PERMITS** REGISTRATION 147021
AIR NEW SOURCE PERMITS REGISTRATION 148095 **AIR NEW SOURCE PERMITS** REGISTRATION 160214
AIR NEW SOURCE PERMITS ACCOUNT NUMBER NAA003C **AIR NEW SOURCE PERMITS** AFS NUM 4834700035
STORMWATER PERMIT TXR05EK41 **WASTEWATER** PERMIT WQ0004414000
WASTEWATER EPA ID TX0124842 **AIR EMISSIONS INVENTORY** ACCOUNT NUMBER NAA003C
TAX RELIEF ID NUMBER 18123 **TAX RELIEF** ID NUMBER 18001

Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

Date Compliance History Report Prepared: May 04, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 04, 2017 to May 04, 2022

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

Name: Yuliya Dunaway

Phone: (210) 403-4077

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:

1 Effective Date: 06/27/2018 ADMINORDER 2017-1489-AIR-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(3)

30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)

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)

Rqmt Prov: Special Condition 1 PERMIT

Special Condition 8 OP

Description: Failed to comply with the permitted annual MAERs for PM, PM10, and PM2.5. Specifically, the Wood Storage Manual Pile, EPN MANPILE, exceeded the permitted annual MAERs of 0.86 ton per year ("tpy"), 0.41 tpy, and 0.06 tpy based on a rolling 12-month period for PM, PM10, and PM2.5, respectively, for the 12-month periods ending October 2016 through April 2017, resulting in the unauthorized release of 0.35 ton of PM, 0.16 ton of PM10, and 0.02 ton of PM2.5.

Classification: Minor

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)

30 TAC Chapter 122, SubChapter B 122.145(2)(C)

5C THSC Chapter 382 382.085(b)

Rqmt Prov: General Terms and Conditions OP

Description: Failed to submit a deviation report within 30 days after the end of the reporting period. Specifically, the Respondent reported no deviations on the deviation report for the September 8, 2016 through March 7, 2017 reporting period but a deviation for failing to comply with the permitted PM, PM10, and PM2.5 annual MAERs for EPN MANPILE occurred from October 1, 2016 through March 7, 2017.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	May 19, 2017	(1427228)
Item 2	June 08, 2017	(1416915)
Item 3	June 14, 2017	(1433220)
Item 4	July 07, 2017	(1441797)
Item 5	August 17, 2017	(1445466)
Item 6	September 12, 2017	(1452051)
Item 7	October 18, 2017	(1457927)
Item 8	November 07, 2017	(1448371)
Item 9	November 08, 2017	(1449087)
Item 10	November 17, 2017	(1463358)
Item 11	December 15, 2017	(1469783)
Item 12	January 17, 2018	(1476490)
Item 13	February 19, 2018	(1488658)
Item 14	March 09, 2018	(1492322)
Item 15	April 13, 2018	(1495620)
Item 16	May 02, 2018	(1481687)
Item 17	May 17, 2018	(1502563)
Item 18	June 14, 2018	(1509667)
Item 19	July 15, 2018	(1515986)
Item 20	August 13, 2018	(1522025)
Item 21	September 17, 2018	(1529228)
Item 22	October 18, 2018	(1535532)
Item 23	November 09, 2018	(1543406)
Item 24	December 14, 2018	(1547115)
Item 25	January 11, 2019	(1565537)
Item 26	February 15, 2019	(1565535)
Item 27	March 15, 2019	(1565536)
Item 28	April 17, 2019	(1573759)
Item 29	May 17, 2019	(1587110)
Item 30	June 11, 2019	(1587111)
Item 31	July 16, 2019	(1595107)
Item 32	August 12, 2019	(1601397)
Item 33	August 28, 2019	(1590614)
Item 34	September 10, 2019	(1591223)
Item 35	September 12, 2019	(1608305)
Item 36	October 14, 2019	(1615176)
Item 37	November 12, 2019	(1620981)
Item 38	December 17, 2019	(1628319)
Item 39	February 13, 2020	(1642557)
Item 40	March 13, 2020	(1649066)
Item 41	April 02, 2020	(1629805)
Item 42	April 10, 2020	(1655428)
Item 43	April 26, 2020	(1644734)
Item 44	May 12, 2020	(1661978)
Item 45	May 13, 2020	(1675465)
Item 46	June 05, 2020	(1668518)
Item 47	July 07, 2020	(1657909)
Item 48	August 11, 2020	(1682245)
Item 49	September 09, 2020	(1688805)

Item 50	October 07, 2020	(1695174)
Item 51	November 06, 2020	(1718124)
Item 52	December 10, 2020	(1718125)
Item 53	January 12, 2021	(1718126)
Item 54	February 08, 2021	(1731175)
Item 55	March 09, 2021	(1731176)
Item 56	April 05, 2021	(1731177)
Item 57	May 13, 2021	(1742859)
Item 58	June 09, 2021	(1742860)
Item 59	July 08, 2021	(1753560)
Item 60	August 10, 2021	(1758943)
Item 61	September 13, 2021	(1768298)
Item 62	October 12, 2021	(1778885)
Item 63	October 13, 2021	(1683715)
Item 64	November 09, 2021	(1785492)
Item 65	December 13, 2021	(1792537)
Item 66	January 12, 2022	(1800378)
Item 67	February 10, 2022	(1808209)
Item 68	April 28, 2022	(1810243)

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
CITY OF AUSTIN
RN103219127

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2022-0515-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 the City of Austin (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 power plant located at 499 County Road 988 near Cushing, Nacogdoches County, Texas (the "Plant"). The Plant 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 \$9,000 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$7,200 of the penalty and \$1,800 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 a record review conducted on March 15, 2022, an investigator documented that the Respondent failed to comply with the maximum allowable emissions rate ("MAER"), in violation of 30 TEX. ADMIN. CODE §§ 101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review ("NSR") Permit Nos. 77679 and PSDTX1061M1, Special Conditions No. 1, Federal Operating Permit No. O3455, General Terms and Conditions and Special Terms and Conditions No. 8, and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent exceeded the ammonia ("NH₃") MAER of 18.00 pounds per hour ("lbs/hr") by 3.40 lbs/hr for one hour on July 21, 2021 and by 3.10 lbs/hr for one hour on July 31, 2021 for the Bubbling Fluidized Bed Boiler, Emissions Point Number ("EPN") BFB-1, resulting in 6.50 pounds of unauthorized NH₃ emissions.

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: City of Austin, Docket No. 2022-0515-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. Implement measures and/or procedures designed to comply with the NH₃ hourly MAER for the Bubbling Fluidized Bed Boiler, EPN BFB-1; or
- ii. Submit an administratively complete permit amendment application for NSR Permit Nos. 77679 and PSDTX1061M1 to increase the NH₃ MAERs for EPN BFB-1, in accordance with 30 TEX. ADMIN. CODE § 116.111, to:

Air Permits Division, MC 163
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. If a permit amendment application is submitted, respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the amendment application for NSR Permit Nos. 77679 and PSDTX1061M1 by any deadline specified in writing.
- c. Within 45 days after the effective date of this Order, submit written certification, as described in Ordering Provision No. 2.d, to demonstrate compliance with Ordering Provision No. 2.a.
- d. If a permit amendment application is submitted, within 180 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 that the amendment for NSR Permit Nos. 77679 and PSDTX1061M1 has been obtained or operations have ceased until authorization is obtained. 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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1830

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 Plant 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



12/5/2022

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 OAG 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 OAG 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.

Kathleen Garrett

Signature

05/27/22

Date

Kathleen Garrett

Name (Printed or typed)
Authorized Representative of
City of Austin

Director, Environmental Health & Safety

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.