

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ATLANTIC COFFEE INDUSTRIAL
SOLUTIONS, LLC
RN100214931

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2015-0542-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 Atlantic Coffee Industrial Solutions, LLC ("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 coffee and rice processing plant located at 3900 Harrisburg Boulevard in Houston, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 7, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Three Thousand Nine Hundred Dollars (\$23,900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nineteen Thousand One

Hundred Twenty Dollars (\$19,120) of the administrative penalty and Four Thousand Seven Hundred Eighty Dollars (\$4,780) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that on April 7, 2015, the Respondent submitted revised summary reports of the Excessive Emissions and Monitoring System Performance that included all the required information.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to maintain compliance with the maximum allowable emission rates ("MAER") for Boiler 6, Emission Point Number ("EPN") 404, in violation of 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 116.115(c), and 122.143(4), New Source Review Permit No. 56398, Special Conditions No. 1, Federal Operating Permit ("FOP") No. 01018, Special Terms and Conditions ("STC") No. 7, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted from March 3, 2015 through March 10, 2015. Specifically, the Respondent exceeded the EPN 404 carbon monoxide ("CO") MAER of 7.21 pounds per hour ("lbs/hr") and the nitrogen oxides ("NOx") MAER of 45.44 lbs/hr by an average of 3.98 lbs/hr for 66 hours and by an average of 2.62 lbs/hr for 141 hours, respectively, from February 1, 2014 through January 31, 2015, resulting in the unauthorized release of approximately 262.68 pounds of CO and 369.42 pounds of NOx.

2. Failed to include all the required information in the summary report of the Excessive Emissions and Monitoring System Performance, in violation of 30 TEX. ADMIN. CODE §§ 101.20(1) and 122.143(4), 40 CODE OF FEDERAL REGULATIONS § 60.7(d), FOP No. O1018, STC No. 4A, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted from March 3, 2015 through March 10, 2015. Specifically, the Respondent submitted summary reports for the Boiler 6 Continuous Emissions Monitoring System ("CEMS") dated April 30, July 30, and October 30, 2014 and January 28, 2015 that did not contain the required monitor manufacturer and model number and date of the latest certification or audit for the CEMS.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Atlantic Coffee Industrial Solutions, LLC, Docket No. 2015-0542-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement measures and/or procedures to ensure compliance with permitted MAERs for CO and NOx, or submit an administratively complete permit amendment application for New Source Review Permit No. 56398, 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, then respond completely and adequately, as determined by the TCEQ, to all requests for information

concerning the permit amendment application within 30 days after the date of such requests, or by any other deadline specified in writing;

- c. Within 45 days after the effective date of this Agreed Order submit written certification as described in Ordering Provision No. 2. d. below demonstrating compliance with Ordering Provision No. 2.a.; and
- d. If a permit amendment application is submitted, then within 180 days after the effective date of this Agreed Order, submit written certification that a permit amendment has been obtained or that operation has ceased until such time that an appropriate authorization is obtained. The certification shall be notarized by a State of Texas Notary Public and 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
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. 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

Ramona Martinez
For the Executive Director

10/30/15
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

David Martinez
Signature

10-7-15
Date

DAVID MARTINEZ
Name (Printed or typed)
Authorized Representative of
Atlantic Coffee Industrial Solutions, LLC

C.E.O.
Title

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