

Cause No. _____

STATE OF TEXAS,
Plaintiff,

v.

MILWHITE, INC.,
Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

53RD, DISTRICT COURT

____ JUDICIAL DISTRICT

ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF

The State of Texas, by and through its Attorney General, on behalf of the Texas Commission on Environmental Quality, an agency of the State of Texas, files this Original Petition and Application for Injunctive Relief, seeking injunctive relief, civil penalties, attorney’s fees and costs, and any other available relief for violations of the Texas Clean Air Act and rules and permits issued thereunder.

I. DISCOVERY

1.1 Plaintiff will conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

1.2 The case is not subject to the expedited actions process under Texas Rule of Civil Procedure 169 because the State seeks non-monetary injunctive relief.

1.3 Plaintiff states, in accordance with Texas Rule of Civil Procedure 47(c), that it seeks non-monetary injunctive relief, monetary relief in the form of statutory civil penalties over \$1,000,000.00, attorney’s fees, and all other relief to which it is entitled.

II. PARTIES

2.1 Plaintiff, the State of Texas (“State” or “Plaintiff”), is authorized to bring this suit through its Attorney General at the request of the Texas Commission on Environmental Quality (“TCEQ”) pursuant to Tex. Water Code §§ 7.032 and 7.105. The State is not required to pay a filing fee or other security for costs and is not required to pay a bond to the Court granting an injunction under Tex. Civ. Prac. & Rem. Code § 6.001.

2.2 Defendant Milwhite, Inc. (“Milwhite”) is a Texas corporation whose principal place of business is located in Cameron County at 5487 South Padre Island Highway, Brownsville, Texas 78521. Milwhite may be served with process through its registered agent for service of process, Coronel Financial Services LLC, at 2525 North Loop W. Suite 125, Houston, Texas 77008, or wherever it may be found.

2.3 Milwhite is a “person” pursuant to Section 382.003(10) of the Texas Health and Safety Code and Section 311.005(2) of the Texas Government Code.

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction over this case, and venue is proper in Travis County pursuant to Tex. Water Code §§ 7.032(b), 7.105(c) and Tex. Gov’t Code § 2001.202(a).

3.2 The State seeks monetary relief within the jurisdictional limits of this Court.

IV. NATURE OF SUIT AND AUTHORITY

4.1 This is a civil suit to enforce the Texas Clean Air Act (“TCAA”), codified in Chapter 382 of the Texas Health and Safety Code, and relevant TCEQ rules and regulations promulgated thereunder as related to fugitive dust emissions emanating from the Milwhite facility located at 5487 South Padre Island Highway, Brownsville, Texas 78521 (the “Site”). The Site mills and processes raw materials including barite and common clay and, in doing so, has released emissions in violation of the TCAA, the rules and regulations promulgated thereunder by TCEQ, and an air quality permit issued by TCEQ. Despite numerous complaints regarding emissions from local residents, multiple lawsuits filed against it by the City of Brownsville, a coalition of neighboring property owners, and its own insurance carrier, extensive negative coverage in local media, and significant attention from local legislators, Milwhite continues to operate the Site in violation of, and with disregard for, state law and continues to threaten the health and safety of the surrounding community.

The Texas Clean Air Act

4.2 It is the policy of the State to “safeguard the state’s air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.” Tex. Health & Safety Code § 382.002(a).

4.3 A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of the TCAA or of any TCEQ rule, permit, or order. *Id.* at § 382.085(b).

4.4 An “air contaminant” includes “particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.” *Id.* at § 382.003(2).

4.5 The TCAA confers jurisdiction on TCEQ to adopt rules regulating the management of atmospheric emissions of air contaminants. *Id.* at § 382.017. The TCAA also confers jurisdiction on TCEQ to issue permits to facilities that emit air contaminants, and to establish and enforce specified conditions contained within each permit. *Id.* at §§ 382.051, 382.0513.

Nuisance and TCEQ’s General Air Quality Rules

4.6 TCEQ has promulgated general air quality rules under the TCAA. Pursuant to 30 Tex. Admin. Code § 101.4, “[n]o person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.” Violation of this rule constitutes a nuisance.

Permitting Under TCEQ Rules

4.7 TCEQ air quality permits set forth specific means and methods for implementing emissions controls at a facility and set forth facility-specific limits for emissions of air contaminants from a facility.

4.8 Holders of such permits “shall comply with all special conditions contained in the permit document.” 30 Tex. Admin. Code § 116.115(c).

Enforcement Authority

4.9 No person may cause, suffer, allow, or permit any activity in violation of the TCAA or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

4.10 A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit under the TCEQ’s jurisdiction shall be assessed a civil penalty of not less than \$50.00 nor more than \$25,000.00 for each day of each violation. *Id.* at § 7.102. Each day of a continuing violation is a separate violation. *Id.*

4.11 The Attorney General, at the request of TCEQ, may bring an action for injunctive relief and civil penalties if it appears that a violation or threat of a violation of a statute within the TCEQ’s jurisdiction, or a rule adopted or a permit issued under such a statute, has occurred, is occurring, or is about to occur. *Id.* at §§ 7.032, 7.105.

V. BACKGROUND

Brief Overview

5.1 Milwhite owns and operates the Site, which mills and processes raw materials such as barite and common clay and, on information and belief, has done so at its current location for many years. Prior to 2023, Milwhite’s only regulatory enforcement history with TCEQ concerned a minor record-keeping violation in 2022 related to a failure to provide TCEQ with certain documentation upon request as required under the special conditions of Milwhite’s air quality permit. In fact, the

related violation report noted Milwhite’s “performance classification” was “high.” A Notice of Violation for this record-keeping violation—non-compliance with 30 Tex. Admin. Code § 116.115(c)—was issued on May 20, 2022. However, something changed in 2023.

5.2 TCEQ’s regional office covering Brownsville and Cameron County received at least eight formal complaints in early 2023 alleging fugitive excessive dust emissions were emanating from the Site and migrating to neighboring homes. In response, TCEQ conducted an investigation of the Site from February 14 to 28, 2023, and documented five violations of state rules and regulations. Such violations included failing to comply with air quality permits under 30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b), and the creation of a nuisance under those statutes and 30 Tex. Admin. Code § 101.4.

5.3 On June 26, 2023, TCEQ received another formal complaint alleging that the Site was still generating excessive dust and related emissions that were negatively impacting both the health and property of its neighbors. The complainant also expressed concerns that the Site was operating outside its permitted time frame. This was the first of what would become 16 additional formal complaints received by TCEQ from June to August of 2023 regarding Milwhite and its operations at the Site.

5.4 In response, TCEQ launched a follow-up investigation that took place from July 13 to 27, 2023. This investigation identified fifteen separate violations related to air quality permits under 30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b), and the creation of a nuisance under those statutes and 30 Tex. Admin. Code § 101.4. A Notice of Enforcement concerning the fifteen observed violations was sent to Milwhite on August 31, 2023.

5.5 Following the August 31, 2023 Notice of Enforcement and an additional inspection in September 2023, TCEQ attempted to negotiate a mutually agreeable solution with Milwhite to address the emissions issues at the Site, going so far as to submit an Agreed Administrative Order to

Milwhite to sign whereby Milwhite would take certain corrective actions to settle and resolve the matter. But Milwhite never finalized the Agreed Order and it was subsequently withdrawn by the TCEQ. As discussed below and as confirmed by TCEQ investigators during its February 2024 investigation, Milwhite continues to operate the Site in defiance of TCEQ rules and regulations despite ample notice of its non-compliance and the ongoing impact to the local community in which it operates.

Milwhite's Air Quality Permit

5.6 The most current version of Milwhite's air quality permit, Permit Number 7537, was approved by the TCEQ on March 11, 2013 (the "Permit"). The Permit sets forth limitations, requirements, controls, and conditions for air emissions at the Site. More specifically, the Permit contains 28 "Special Conditions" by which Milwhite must abide as related to topics including emission limitations, fuel specifications for equipment at the Site, operational limitations, compliance obligations, and record-keeping requirements. A list of the Special Conditions associated with the Permit, as kept in TCEQ's publicly available online database along with other relevant permitting documents, is attached as **Exhibit A**. Of note, the Permit was renewed without any changes on February 21, 2020, and is current in all respects.

February–March 2023 Investigation

5.7 In response to complaints received by Milwhite's neighbors, TCEQ scheduled an inspection of the Site for February 2023. On February 14 and 24, 2023, TCEQ investigators observed visible dust emissions leaving the Site during operation and migrating towards nearby homes. Light brown or beige colored dust was documented throughout the nearby properties. Laboratory testing later confirmed the dust collected at these residences was consistent with the dust generated by the Site and was unlikely to have originated from an alternative source. Further, the raw materials processed at the Site and found in the emission dust observed by TCEQ investigators "have the

potential to cause irritation to the to the eyes and/or respiratory tract and skin irritation after exposure to large amounts.”¹

5.8 One of the Special Conditions of the Permit provides that Milwhite shall not allow “visible fugitive emissions” from the Site and, if such emissions occur, records documenting such emissions must be generated. Having observed visible fugitive emissions leaving the Site and migrating to nearby homes on February 14, 2023, TCEQ investigators requested production of Milwhite’s emissions records within three days. Milwhite provided some, but not all, of the requested emissions record-keeping documents required under the Permit on April 11, 2023.

5.9 Investigators also requested Milwhite’s baghouse records on February 14, 2023. A baghouse is a dust collection device that filters air and separates particulates generated during industrial operations to keep dust and solid particulates from entering the workplace and/or being released into the atmosphere. Milwhite was required under Special Condition 28 to not only utilize baghouses but to keep specific records related to baghouse use. Milwhite was unable to provide the requested records to TCEQ upon request.

5.10 In total, the following violations under 30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b) were documented during the February inspections: (1) failure to comply with Special Condition 6 concerning both visible fugitive emissions and related recordkeeping requirements; (2) failure to comply with Special Condition 25 related to the discharge of air contaminants in a concentration and duration that adversely affects human health and welfare and interferes with the normal use and enjoyment of property; (3) failure to comply with Special Condition 28 concerning certain records to be maintained at the Site and made available to TCEQ upon request; and (4) creation of a nuisance under the above statutes and 30 Tex. Admin. Code § 101.4. A Notice

¹ See **Exhibit B**, TCEQ Investigation #1917795, at p. 18.

of Violation consistent with these findings was issued to Milwhite following the February–March 2023 investigation.

July 2023 Investigation

5.11 Milwhite’s failure to comply with the records requests related to the February–March 2023 investigation, along with TCEQ’s continued receipt of complaints indicating the ongoing discharges of visible fugitive emissions from the Site, prompted a follow-up investigation in July 2023. A copy of TCEQ’s report generated following the July 2023 inspection is attached as **Exhibit B**.

5.12 On July 13, 2023, TCEQ investigators visited the Site to conduct a records review and assess the current conditions. They found a Site “blanketed with a finely milled, beige-colored powder”² coating practically any available surface, damaged equipment held together with duct tape, and unwatered stockpiles of raw materials. Following this assessment of the Site, the investigators requested Milwhite produce certain records required under the Permit including, but not limited to, cleaning and maintenance records, processing and volume records, and emissions determinations.

5.13 TCEQ investigators visited with one of the complainants—a resident in close proximity to the Site—on July 24, 2023. Despite the Site not being in operation, a “haze” of dust was “observed emitting off [Milwhite’s] property and migrating onto the complainant’s property.”³ Complainants shared with TCEQ that the dust emissions had a profound impact on their daily lives, preventing normal use and enjoyment of their respective properties and contributing to skin and respiratory irritation. Complainants told investigators they struggled to prevent dust from coming into their homes, were unable to be outside or allow their children to play outside without becoming ill, and “felt like prisoners in their own home[.]”⁴ Notably, at least one TCEQ investigator experienced

² See **Exhibit B** at 3.

³ See *id.* at 5.

⁴ See *id.* at 6.

symptoms after visiting a complainant’s property that included “headache, dry irritated throat, watery left eye, the taste of dirt, grainy texture in the mouth, and coughing” that “persisted approximately 30-45 minutes after leaving the area.”⁵

5.14 TCEQ’s investigators returned on July 27 and 28, 2023, to observe the Site during operating hours and found the systems designed to control dust emissions were ineffective and allowing fugitive emissions to not only cover the Site, but to escape to neighboring properties. While Milwhite officials assured the investigators that work was being done to resolve the emissions issues at the Site, no such maintenance plan was actually received by TCEQ during this time.

5.15 All the violations documented in February 2023 remained unresolved at the July 2023 inspection. The Site continued to create nuisance conditions through visible fugitive dust emissions in violation of Tex. Health & Safety Code § 382.085(b) and 30 Tex. Admin. Code § 101.4.

5.16 As noted above, the Permit contains 28 Special Conditions. The July 2023 Investigation found Milwhite was in violation of 14—**or half**—of these Special Conditions. The 14 violations documented under 30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b) were:

- 5.16.1 Failure to comply with Special Condition 3 of the Permit, which concerns fuel usage for mill dryers. Milwhite was unable to produce records demonstrating compliance.
- 5.16.2 Failure to comply with Special Condition 6 of the Permit, which states that there “shall be no visible fugitive emissions leaving the property” and, in the event of such emissions, records must be generated. Milwhite produced some, but not all, of the requested compliance records.
- 5.16.3 Failure to comply with Special Condition 7 of the Permit, which governs particulate matter emissions for baghouses and sets related performance standards. Milwhite was unable to produce records demonstrating compliance.

⁵ See **Exhibit B** at 14.

- 5.16.4 Failure to comply with Special Condition 10 of the Permit, which limits the Site's maximum operating schedule in terms of hours. The records provided by Milwhite to TCEQ showed the Site routinely exceeded these limitations.
- 5.16.5 Failure to comply with Special Condition 14 of the Permit, which governs additional specifications related to baghouses, including height requirements. The investigation confirmed baghouses at the Site did not meet the height requirements.
- 5.16.6 Failure to comply with Special Condition 15 of the Permit, which sets forth more specifications related to baghouses, including allowable emissions levels and related control standards. Milwhite was unable to produce records demonstrating compliance, and investigators observed improperly installed fabric filter baghouses that failed to properly control particulate matter emissions.
- 5.16.7 Failure to comply with Special Condition 19 of the Permit, which requires cleaning, containment, and dampening of material spillage to minimize emissions. Investigators observed these processes were not being adequately performed and emissions were not being effectively minimized.
- 5.16.8 Failure to comply with Special Condition 21 of the Permit, which requires the watering of material stockpiles to control dust emissions. Investigators were told the sprinkler system that watered the stockpiles was damaged and not operational. No alternative process was observed, and dust emissions were not effectively controlled.
- 5.16.9 Failure to comply with Special Condition 22 of the Permit, which sets requirements for the cleaning and maintenance of all air pollution abatement equipment. Investigators observed equipment in various states of disrepair, some held together with duct tape, and noted the equipment and surrounding areas were coated with finely milled, beige-colored powder. The investigators also observed piles of this material beneath the Baghouses, the Grinder Dryers, the Bulk Storage Tanks, the Railcar Loading area, and all throughout the processing building and outside of the processing building.
- 5.16.10 Failure to comply with Special Condition 23, which requires all hooding, duct, and collection systems to effectively capture emissions and sets related control standards for these systems and the Site. Investigators observed emissions escaping from these systems through holes, cracks, and other conditions including improperly maintained equipment in need of repair and doorways at the processing and warehousing buildings left open during operation.
- 5.16.11 Failure to comply with Special Condition 25 of the Permit, which incorporates the language of 30 Tex. Admin. Code § 101.4 and states the Site must prevent the discharge of air contaminants from creating a nuisance. As noted in further detail above, investigators observed fugitive dust emissions emanating from the Site and migrating to nearby properties, resulting in significant impacts to

human health and welfare and interfering with the normal use and enjoyment of surrounding property.

- 5.16.12 Failure to comply with Special Condition 26 of the Permit, which provides that TCEQ may direct a permit holder to perform ambient air monitoring and/or testing during normal operation of the facilities in accordance with accepted TCEQ practices and procedures. Despite receiving such a directive from TCEQ, Milwhite was unable to produce records demonstrating efforts to conduct ambient air monitoring or testing.
- 5.16.13 Failure to comply with Special Condition 27 of the Permit, which sets requirements for the monitoring and recording of differential pressure levels across each baghouse. Milwhite was unable to produce records demonstrating compliance.
- 5.16.14 Failure to comply with Special Condition 28 of the Permit, which sets forth records to be maintained including the volumes of material processed, hours of operation, and the cleaning and maintenance schedules for abatement equipment. Milwhite produced some, but not all, of the requested compliance records.

5.17 A Notice of Enforcement consistent with these findings was issued to Milwhite on August 31, 2023.

September 2023 Investigation

5.18 From September 1 through 25, 2023, TCEQ received eleven new complaints regarding the Site alleging nuisance emissions, raw material stockpiles in excess of allowable limits, and the unauthorized storage of raw materials. TCEQ investigators returned to the Site the same month. A copy of TCEQ's report generated following the September 2023 inspection is attached as **Exhibit C**.

5.19 Upon arriving at the Site on September 12, 2023, TCEQ investigators confirmed an adjacent, unpermitted property was being used by Milwhite to store barite. Per Special Condition 24 of the Permit, Milwhite may stockpile up to 69,000 square feet of raw material at the Site. Investigators found 146,740 square feet of raw material—more than twice the allowable amount under the Permit—stockpiled at both authorized locations at the Site and unauthorized adjacent properties. Thus, in addition to the ongoing violations documented in previous inspections, the following additional

violation was noted, bringing Milwhite's number of violations under 30 Tex. Admin. Code § 116.115(c) and Tex. Health & Safety Code § 382.085(b) to fifteen:

- 5.19.1 Failure to comply with Special Condition 24 of the Permit, which limits Milwhite's raw material stockpiles to 69,000 square feet at the Site.

February 2024 Investigation

5.20 As noted above, TCEQ was unable to reach a resolution with Milwhite to resolve the ongoing issues at the Site following the 2023 investigations. TCEQ and local officials continued to receive additional complaints from nearby residents regarding emissions from the Site and related concerns. In light of these developments and Milwhite's clear disinterest in complying with state rules, regulations, and its air quality permit, the undersigned Assistant Attorneys General requested TCEQ investigators follow-up with another investigation of the Site. A copy of TCEQ's investigation report generated following the February 2024 inspection and an affidavit from a TCEQ investigator are attached as **Exhibit D**.

5.21 On the night of February 8, 2024, TCEQ investigators documented visible fugitive emissions leaving the Site during operating hours and migrating to neighboring properties in a manner that presented both a hazard to human health—one investigator reported feeling discomfort, coughing, and a dry throat after being subjected to the emissions plume—and detrimentally impacting the property owners' normal use and enjoyment of their respective properties. Upon returning the morning of February 12, 2024, the investigators observed neighboring properties coated with the same light brown particulate matter consistent with prior investigations and linked to emissions from the Site. The simple act of walking through the grass at the neighboring properties left the investigator's boots covered in dust.

5.22 Previously documented violations of state rules and regulations and Milwhite's permit remained unresolved, including but not limited to: (1) large quantities of spilled materials littering the Site, (2) emissions spilling out from the open doors of processing buildings, (3) improperly repaired

and/or maintained emissions abatement equipment, and (4) raw material stockpiles exceeding allowable limits and locations under the Permit. In addition to the unaddressed and ongoing violations documented in previous investigations at the Site, the investigators also documented the following additional violation of 30 Tex. Admin. Code § 116.115(c), and Tex. Health & Safety Code § 382.085(b):

- 5.22.1 Failure to comply with Special Condition 17 of the Permit, which requires Milwhite to maintain a visible and/or audible warning device on each bulk storage silo to warn operators of potential overloading.

VI. CIVIL PENALTIES

6.1 By the activities described above, Milwhite has caused, suffered, allowed, or permitted violation of the TCAA and TCEQ permits and rules promulgated thereunder, including 30 Tex. Admin. Code §§ 101.4 and 116.115(c), each day from at least February 14, 2023 through the date of this filing, by creating a nuisance through the discharge of air emissions at the Site “in such concentration and of such duration as . . . to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.” 30 Tex. Admin. Code § 101.4.

6.2 By the activities described above, Milwhite has caused, suffered, allowed, or permitted violations of the TCAA and 30 Tex. Admin. Code 116.115(c) on each of the dates set forth below by failing to comply with **16 of the 28** Special Conditions of the air quality permit issued to it by TCEQ:

- 6.2.1 Failure to comply with Special Condition 3 of the Permit, reason, from at least July 21, 2023, and continuing through the date of this filing;
- 6.2.2 Failure to comply with Special Condition 6 of the Permit from at least February 14, 2023, and continuing through the date of this filing;
- 6.2.3 Failure to comply with Special Condition 7 of the Permit from at least July 21, 2023, and continuing through the date of this filing;
- 6.2.4 Failure to comply with Special Condition 10 of the Permit from at least June 1, 2023, and continuing through the date of this filing;
- 6.2.5 Failure to comply with Special Condition 14 of the Permit from at least July 21, 2023, and continuing through the date of this filing;

- 6.2.6 Failure to comply with Special Condition 15 of the Permit from at least July 21, 2023, and continuing through the date of this filing;
- 6.2.7 Failure to comply with Special Condition 17 of the Permit from at least February 13, 2024, and continuing through the date of this filing;
- 6.2.8 Failure to comply with Special Condition 19 of the Permit from at least July 13, 2023, and continuing through the date of this filing;
- 6.2.9 Failure to comply with Special Condition 21 of the Permit from at least July 13, 2023, and continuing through the date of this filing;
- 6.2.10 Failure to comply with Special Condition 22 of the Permit from at least July 13, 2023, and continuing through the date of this filing;
- 6.2.11 Failure to comply with Special Condition 23 of the Permit from at least July 27, 2023, and continuing through the date of this filing;
- 6.2.12 Failure to comply with Special Condition 24 of the Permit from at least September 12, 2023, and continuing through the date of this filing;
- 6.2.13 Failure to comply with Special Condition 25 of the Permit from at least February 14, 2023, and continuing through the date of this filing;
- 6.2.14 Failure to comply with Special Condition 26 of the Permit from at least July 21, 2023, and continuing through the date of this filing;
- 6.2.15 Failure to comply with Special Condition 27 of the Permit from at least February 14, 2023, and continuing through the date of this filing;
- 6.2.16 Failure to comply with Special Condition 28 of the Permit from at least July 21, 2023, and continuing through the date of this filing;

6.3 Pursuant to Tex. Water Code §§ 7.101, 7.102, and 7.105, Milwhite is liable to the State for civil penalties within the range of \$50.00 to \$25,000.00 for each violation and each day. Accordingly, the State requests the Court assess civil penalties within the statutory range for each day of each violation alleged against Milwhite.

VII. INJUNCTIVE RELIEF

7.1 The Attorney General may institute a suit in the name of the State of Texas and on behalf of TCEQ to enjoin a violation or threatened violation of any “statute within the commission’s

jurisdiction or a rule adopted or an order or a permit issued under such a statute....” Tex. Water Code §§ 7.032, 7.105.

7.2 As set forth above, Milwhite has caused, suffered, allowed, or permitted continuous and repeated violations of TCEQ’s rules regarding air quality, air emissions, and related permits.

7.3 No bond is required of the State prior to granting of an injunction as set forth in Tex. Water Code § 7.032(d).

7.4 The State requests a permanent injunction ordering Milwhite to be enjoined as follows:

Words and Terms:

The following terms shall have the following meaning in this Injunction:

1. **“Milwhite”** shall mean and refer to Milwhite, Inc., its officers, agents, servants, employees, and all other persons acting in concert or participation with it.
2. **“Effective Date”** shall mean and refer to the date on which the Court signs an order or judgment with injunctive provisions.
3. **“Site”** shall mean and refer to the property located at 5487 South Padre Island Highway, Brownsville, Texas 78521.
4. **“Permit”** shall mean and refer to Milwhite’s air quality permit, Permit Number 7537.
5. **“State”** shall mean and refer to the State of Texas.
6. **“TCEQ”** shall mean and refer to the Texas Commission on Environmental Quality.

Ordering Provisions:

1. Immediately following the Effective Date, Milwhite shall take measures to ensure at all times that no visible fugitive emissions are leaving the Site, including conducting and recording observations for visible emissions every four hours of operations. Such observations and recordings shall be performed:
 - a. For a minimum of six minutes;
 - b. Performed approximately perpendicular to the expected emissions plume direction;
 - c. To the extent practical, with the sun behind the observer; and
 - d. The visible opacity of emissions should be performed by a certified visible opacity

individual as described in the Environmental Protection Agency, Method 9.

If visible fugitive emissions are observed leaving the Site during such operations, Milwhite must take immediate action to eliminate such visible fugitive emissions, including ceasing operations related to loading, transferring, milling, grinding, and crushing of raw materials until corrective actions have been performed. The corrective actions shall be documented and, along with the observation records, be made available to TCEQ upon request.

2. Within 15 Days of the Effective Date, Milwhite shall submit correspondence to the TCEQ Harlingen Regional Office Air Section Manager to schedule a meeting prior to performing ambient air monitoring and/or other testing to be specified by TCEQ for the purposes of establishing the actual pattern and quantities of air contaminants being emitted into the atmosphere at the Site per the Permit.
3. Within 30 Days of the Effective Date, Milwhite shall:
 - a. Implement measures designed to prevent visible fugitive emissions from leaving the Site and from causing nuisance conditions that impact off-site receptors;
 - b. Begin maintaining all records as required under the Permit and making such records available to TCEQ upon request;
 - c. Implement measures designed to minimize dust emissions at the Site from causing nuisance dust conditions and nuisance health conditions that impact off-site receptors;
 - d. Implement measures designed to comply with the maximum operating schedule;
 - e. Increase the vertical stack heights for the three Grinder Dryer Baghouse Stacks and Grinder Baghouse Stack to comply with the minimum vertical stack height in accordance with Permit Number 7537;
 - f. Implement measures designed to immediately clean up, contain, and dampen the spillage of any material at the baghouses, grinder dryers, bulk storage tanks, railcar loading area, throughout the inside of the processing building, and outside of the process building;
 - g. Implement measures designed to water the stockpiles as necessary to achieve maximum control of dust emissions;
 - h. Begin properly maintaining and operating all air pollution abatement equipment, including the filters for the bulk storage tanks, during operations;
 - i. Repair the holes, cracks, and other conditions in the hooding, duct, and collection systems connecting the mill, mill dryers, baghouses, bagging hoppers, and bulk storage tanks to effectively capture emissions from this equipment to prevent fugitive

emissions from the Site;

- j. Implement measures designed to ensure that the grinding buildings are kept completely closed on the north side except for short periods of entering and exiting while the Plant is in operation.
4. Within 45 Days of the Effective Date, Milwhite shall submit written certification to TCEQ demonstrating compliance with Ordering Provisions 2 and 3.
5. Within 60 Days of the Effective Date, Milwhite shall hold the meeting with TCEQ described in Ordering Provision 2.
6. Within 120 Days of the Effective Date, Milwhite shall perform the air monitoring and/or testing described in Ordering Provision 2 per the specification of TCEQ as set forth in the meeting described in Ordering Provision 5.
7. Within 150 Days of the Effective Date, Milwhite shall submit written certification to TCEQ demonstrating compliance with Ordering Provisions 5 and 6.
8. Within 180 Days of the Effective Date, Milwhite shall submit the results of the air monitoring and/or testing performed in accordance with Ordering Provision 5 to the Harlingen Regional Office Air Section Manager.
9. The written certifications required in Ordering Provisions 4 and 7 shall include detailed supporting documentation, including photographs, receipts, and/or other records demonstrating compliance. Such certifications must be signed by a representative of Milwhite and shall include the following 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 familiarity 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 written certifications shall be submitted to:

Enforcement Division
Texas Commission on Environmental Quality
P.O. Box 13087, MC 149A
Austin, Texas 78711-3087

and

Air Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

Ian Lancaster, Assistant Attorney General
Re: AG # CX0220407318
Office of the Attorney General
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
Ian.Lancaster@oag.texas.gov

7.5 The State requests all other injunctive relief to which it is entitled.

VIII. ATTORNEY'S FEES AND COSTS

8.1 This is an action brought by the State to recover civil penalties and for injunctive relief. Therefore, as set forth in Tex. Water Code § 7.108, the Attorney General is entitled to recover and collect reasonable attorney's fees, investigative costs, and court costs incurred in relation to this proceeding on behalf of the State. In the event of an appeal to the Court of Appeals or to the Texas Supreme Court, the Attorney General is entitled to recover and collect its additional reasonable attorney's fees and court costs on behalf of the State.

IX. POST-JUDGMENT INTEREST

9.1 Pursuant to Tex. Fin. Code § 304.003, the State asks this Court to award the State post-judgment interest on all amounts awarded in relation to this proceeding, at the maximum rate allowed by law.

PRAYER

Plaintiff, the State of Texas, requests:

1. That citation be issued for Defendant Milwhite, Inc. to appear and answer;
2. That upon trial, the Court grant a permanent injunction against Defendant Milwhite, Inc., as requested above;

3. That the Court grant judgment against Defendant Milwhite, Inc. for appropriate civil penalties within the range allowed by law;
4. That the Court award the State its reasonable attorney's fees, court costs, and reasonable investigative costs in this action;
5. That the Court award the State post-judgment interest on all amounts awarded in this suit until fully paid; and
6. That the Court award the State all such other relief, general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

KELLIE E. BILLINGS-RAY
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ATTORNEYS FOR THE STATE OF TEXAS

EXHIBIT A
Special Conditions
Permit No. 7537

Special Conditions

Permit Number 7537

Emission Limitations

1. This permit authorizes only those sources of emissions listed in the attached table entitled "Emission Sources - Maximum Allowable Emission Rates," and those sources are limited to the emission limits and other conditions specified in the table. In addition, this permit authorizes all emissions from planned startup and shutdown activities associated with facilities or groups of facilities that are authorized by this permit. **(3/13)**

Fuel Specifications

2. This permit does not authorize the operation of an internal combustion engine in conjunction with this facility. The holder of this permit shall obtain prior authorization for any internal combustion engine that remains at a single point or location for more than 12 consecutive months. Any engine that remains at a single point or location for less than or equal to 12 consecutive months is not considered a stationary source and therefore no authorization is required. Any documentation received authorizing any engine shall be a part of the permit and remain with the permit. **(4/10)**
3. Fuel for the mill dryers (Emission Point Numbers [EPN] 12, 22 and 38) shall be pipeline-quality sweet natural gas. Use of any other fuel will require prior approval of the Executive Director of the Texas Commission on Environmental Quality (TCEQ). **(3/13)**
4. Upon request by the Executive Director of the TCEQ or the TCEQ Regional Director or any local air pollution control program having jurisdiction, the holder of this permit shall provide a sample and/or an analysis of the fuel(s) used in these facilities or shall allow air pollution control program representatives to obtain a sample for analysis. **(4/10)**

Federal Applicability

5. These facilities shall comply with all applicable requirements of the U.S. Environmental Protection Agency (EPA) Regulations on Standards of Performance for New Stationary Sources (NSPS) promulgated in Title 40 Code of Federal Regulations (40 CFR) Part 60, specifically the following: **(4/10)**
 - A. Subpart A - General Provisions; and
 - B. Subpart OOO - Nonmetallic Mineral Processing Plants promulgated prior to April 28, 2009.

Opacity/Visible Emission Limitations

6. There shall be no visible fugitive emissions leaving the property. Observations for visible emissions shall be performed and recorded quarterly. The visible emissions determination

shall be made during normal plant operations. Observations shall be made on the downwind property line for a minimum of six minutes. If visible emissions are observed, an evaluation must be accomplished in accordance with EPA 40 CFR Part 60, Appendix A, Test Method (TM) 22, using the criteria that visible emissions shall not exceed a cumulative 30 seconds in duration in any six-minute period. If visible emissions exceed the TM 22 criteria, immediate action shall be taken to eliminate the excessive visible emissions. The corrective action shall be documented within 24 business hours of completion. **(4/10)**

7. Opacity of particulate matter emissions from any fabric filter baghouse stack at this plant shall not exceed five percent. A visible emission determination shall be performed on the fabric filter baghouse stacks during normal plant operations and the results recorded quarterly. The visible emissions observations shall be made at least 15 feet and no more than 0.25 mile from the emission point. If visible emissions are observed from the emission point the owner or operator shall:
 - A. Assume the five percent opacity limit is exceeded, take immediate action to eliminate visible emissions, record the corrective action within 24 hours, and comply with any applicable requirements in 30 Texas Administrative Code (30 TAC) §101.201, Emissions Event Reporting and Record Keeping Requirements; or
 - B. Determine opacity using 40 CFR Part 60, Appendix A, TM 9. If the five percent opacity limit is exceeded, take immediate action to eliminate visible emissions, record the corrective action within 24 hours, and comply with applicable requirements in 30 TAC §101.201, Emissions Event Reporting and Record Keeping Requirements. **(3/13)**
8. In accordance with 40 CFR Part 60, Appendix A, TM 9 or equivalent, and except for those periods described in 30 TAC § 101.201 and § 101.211, opacity of emissions from material loading/unloading operations or from any transfer point on belt conveyors shall not exceed 10 percent and from any crusher shall not exceed 15 percent averaged over a six-minute period.

Operational Limitations, Work Practices, and Plant Design

9. The facility shall be limited to the following hourly and annual throughput rates: **(3/13)**

Source	tons per hour	tons per year in any rolling 12-month period
Plant-Wide Throughput	79	250,000
Jaw Crusher	40	225,000
Raymond Mill 1	13	94,640
Raymond Mill 2	13	94,640
Mill 3	13	94,640

10. The facilities shall be limited to a maximum operating schedule of 20 hours per day, 7 days per week, 52 weeks per year, and 7,280 hours per year. **(3/13)**

11. The following materials are authorized to be handled and stored at this plant: **(3/13)**
 - A. Limestone;
 - B. Clays, including fireclay, fuller's earth, ball clay, and common clay;
 - C. Rock salt;
 - D. Talc;
 - E. Barite;
 - F. Zeolite; and
 - G. Celestite.
12. Storage or processing of any material or chemical other than those listed will require approval in writing from the TCEQ. Written approval shall be a part of the permit documentation and remain with the permit. **(4/10)**
13. The processing of talc shall be restricted to only those areas defined as the East Pile (EPN 2), Railcar Receiving (EPNs BC-REC and BD-REC) and Bulk Material Loadout (EPN ORE-LO). **(4/10)**
14. All fabric filter baghouses shall discharge through vertical stacks protected with rain caps. The Grinder 1 Dryer Baghouse Stack (EPN 12), Grinder 2 Dryer Baghouse Stack (EPN 22), Grinder 3 Dryer Baghouse Stack (EPN 38) and Grinder 3 Bagging Baghouse Stack (EPN 39) shall each exhaust a minimum of 50 feet above ground level. The Loading Baghouse Stack (EPN 37) and the Bagging Baghouse Stack (EPN MIX-BH) shall exhaust a minimum of 27 feet above ground level. **(3/13)**
15. Fabric filter baghouses containing bags with a laminate Polyester (ePTFE) membrane and designed to meet an outlet grain loading of not more than 0.002 grains per dry standard cubic feet (gr/dscf) of exhaust each, properly installed and in good working order, shall control particulate matter emissions from the Grinder 1 Dryer (EPN 12), Grinder 2 Dryer (EPN 22), Loading (EPN 37), Grinder 3 Dryer (EPN 38), Grinder 3 Bagging (EPN 39) and Bagging (EPN MX-BH) when this equipment is in operation. **(3/13)**
16. A dust collection system designed to meet an outlet grain loading of not more than 0.01 gr/dscf of exhaust, properly installed and in good working order, shall control particulate matter from the Railcar loading (EPN RC-LOAD) when this equipment is in operation. **(3/13)**
17. A visible and/or audible warning device shall be installed on each bulk storage silo to warn operators when the silos are full to prevent overloading. The silos shall not be overloaded at any time. **(3/13)**
18. The transfer of material from bottom-dump railcars into the receiving pit (EPN BD-REC) shall be controlled utilizing tarps and/or curtains to enclose the receiving pit and exit point of the bottom dump hopper. Choke-feed shall be utilized to further reduce potential

generation of emissions. **(4/10)**

19. Spillage of any material used in the process shall be immediately cleaned up and contained and dampened such that dust emissions from wind erosion, vehicle traffic, and other fugitive dust emissions are minimized.
20. All waste material stockpiled on site shall be removed from the property within 75 days. There shall be no stockpiles within 230 feet of the railroad. **(4/10)**
21. Haul trucks shall operate only on paved and cleaned surfaces. All permanent in-plant roads shall be paved, cleaned and watered to control fugitive dust emissions. Stockpiles and unpaved areas on the property subject to vehicle traffic shall be watered as necessary to achieve maximum control of dust emissions. **(3/13)**
22. All air pollution abatement equipment shall be properly maintained and operated during the operation of these facilities. Cleaning and maintenance of the abatement equipment shall be performed as necessary so that the equipment efficiency can be adequately maintained.
23. All hooding, duct, and collection systems shall be effective in capturing emissions from this equipment and in preventing fugitive emissions from the building. The hooding and duct system shall be maintained free of holes, cracks, and other conditions that would reduce the collection efficiency of the emission capture system. While the plant is in operation, the grinding buildings shall be kept totally closed on the north side except for short periods of entering and exiting. The north side of this building shall not have holes, tears, or separated siding where dust can escape. All seals on external augers transferring ground material shall not leak any material. **(4/10)**
24. Stockpiled material shall not exceed 70,000 tons and shall not cover an area greater than 69,000 square feet. Stockpile heights shall not exceed 45 feet unless approved in writing by the TCEQ Regional Office and/or any appropriate local air programs with delegation. Written notification shall be a part of the permit documentation and remain with the permit. **(3/13)**
25. This facility shall not produce a nuisance that may cause or contribute to a condition of "air pollution" as defined in 30 TAC §101.4 as adopted by the TCEQ. If such a condition does occur, additional controls may be required. This facility shall provide notification of a major upset to the TCEQ Regional Office as required in 30 TAC §101.201. This facility shall provide notice of maintenance of pollution emission capture equipment and abatement equipment that may cause excessive emissions as required in 30 TAC §101.211.

Demonstration of Continuous Compliance

26. Upon request by the TCEQ Executive Director or the TCEQ Regional Director having jurisdiction, the holder of this permit shall perform ambient air monitoring, and/or other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere. The tests shall be performed during normal operation of the facilities and shall be performed in accordance with accepted TCEQ practices and procedures. **(4/10)**

27. The differential pressure across each baghouse shall be continuously monitored and recorded at least once each day that the baghouse is in operation. The minimum and maximum pressure drop shall be established using the manufacturer's recommendations, engineering calculation, historical data, or the most recent performance test data. Documentation shall be maintained with the permit records providing the methodology used to determine the minimum and maximum pressure drop allowed.

Each monitoring device shall be calibrated at a frequency in accordance with the manufacturer's specifications or at least annually, whichever is more frequent, and shall be accurate within 0.5 inch of water gauge pressure or 0.5 percent of span. Quality assurance data must be generated when the plant is operating except during the performance of a daily zero check. **(4/10)**

Recordkeeping Requirements

28. In addition to the recordkeeping requirements specified in General Condition No. 7 and 40 CFR Part 60, Subparts A and OOO, the following records shall be maintained at this facility site and made available at the request of personnel from the TCEQ or any other air pollution control program having jurisdiction to demonstrate compliance with permit limitations. These records shall be totaled for each calendar month, retained for a rolling 24-month period, and include the following: **(3/13)**
- A. Quarterly observations for visible emissions and/or opacity observations;
 - B. Daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year;
 - C. Actual hours of operation;
 - D. Records of road cleaning, application of road dust control, or road maintenance for dust control;
 - E. Records of days when baghouses were in use, the concurrent baghouse pressure drop measurements, and the specified calibration data;
 - F. Copies of all Material Safety Data Sheets (MSDS) documentation for each material handed at this site;
 - G. Inspections, malfunctions, repairs, and maintenance of abatement equipment (including bag replacement) as actions occur; and
 - H. A copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment.

Dated: March 11,

2013

EXHIBIT B
TCEQ Investigation #1917795
(July 2023)

AIR CP_102540960_CP_20230727_INVESTIGATION_1917795_
COMP CG_Cameron_CP_20230727_INVESTIGATION
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: Milwhite, Inc.
Customer Number: CN600505960

Regulated Entity Name: BROWNSVILLE FACILITY

Regulated Entity Number: RN102540960

Investigation # 1917795

Incident Numbers

408515	408529
408524	408521
409230	408499
408531	408526
408525	408511
408518	408533
408523	408497
408528	408508

Investigator: VICTORIA TRUMMEL

Site Classification CASE-BY-CASE

Conducted: 07/13/2023 -- 07/27/2023

NAIC Code: 212312

SIC Code: 1422

SIC Code: 3295

Program(s): AIR NEW SOURCE PERMITS

Investigation Type: Compliance Investigation

Location: 77 S EXIT BOCA CHICA, RIGHT ON
INTERNATIONAL BLVD, TURN RIGHT

Additional ID(s): CD0051C
7537
4806100007

Address: 5487 S PADRE ISLD HWY,
BROWNSVILLE, TX , 78521

Local Unit: REGION 15 - HARLINGEN

Activity Type(s): AIRCOMPL - AIR CMPL - AIR
COMPLAINT INV
NMNC - AIR NMNC - NON-MAJOR
NON-CHECKLISTED

Principal(s):

Role	Name
RESPONDENT	MILWHITE INC

Contact(s):

BROWNSVILLE FACILITY - BROWNSVILLE

7/13/2023 to 7/27/2023 Inv. # - 1917795

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Role	Title	Name	Phone	
PARTICIPATED IN	SAFETY COORDINATOR	Rogelio Valdez	Phone	(956) 694-9498
REGULATED ENTITY CONTACT	SAFETY COORDINATOR	Rogelio Valdez	Phone	(956) 694-9498
REGULATED ENTITY MAIL CONTACT	SAFETY COORDINATOR	Rogelio Valdez	Phone	(956) 694-9498
NOE CONTACT	PRESIDENT	Armando De Leon III	Office	(956) 547-1970
REGULATED ENTITY MAIL CONTACT	PRESIDENT	Armando De Leon III	Office	(956) 547-1970
REGULATED ENTITY CONTACT	PRESIDENT	Armando De Leon III	Office	(956) 547-1970
PARTICIPATED IN	PLANT MANAGER	Victor Fernandez		
NOE CONTACT	BUSINESS DEVELOPMENT DIRECTOR	Alberto Farias	Office	(512) 484-3717
NOE CONTACT	SAFETY COORDINATOR	Rogelio Valdez	Phone	(956) 694-9498
REGULATED ENTITY CONTACT	BUSINESS DEVELOPMENT DIRECTOR	Alberto Farias	Office	(512) 484-3717

Other Staff Member(s):

Role	Name
Supervisor	MONICA GALVAN
QA Reviewer	MONICA GALVAN
Investigator	MICHAEL FLORES
Investigator	LORENA ASTUDILLO

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
AIR EQUIPMENT	Equipment
AIR GENERIC INVESTIGATION (20 ITEMS)	Checklist
AIR COMPLAINT INVESTIGATION	Milwhite

Investigation Comments:

INTRODUCTION

On July 13, 2023, through July 27, 2023, Texas Commission on Environmental Quality (TCEQ) Environmental Investigator Victoria Trummel conducted an Onsite Follow-up Investigation of Brownsville Facility located at 5487 S Padre Island Highway, Brownsville (Cameron County), Texas. The Onsite Follow-up Investigation was

BROWNSVILLE FACILITY - BROWNSVILLE

7/13/2023 to 7/27/2023 Inv. # - 1917795

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conducted to address the outstanding alleged violations associated with investigation number 1880582, which included a compliance due date of July 12, 2023 to address the outstanding, active violations.

Additionally, between June 26, 2023, through August 28, 2023, the TCEQ Harlingen Regional Office received sixteen complaints alleging a facility was causing a nuisance due to high dust emissions prompting an Air Complaint Investigation, and a Non Major Non Checklisted (NMNC) Investigation to further determine compliance with applicable air quality regulations.

Additionally participating in this investigation were TCEQ Environmental Investigators Michael Flores and Matthew Briseno, TCEQ Harlingen Regional Section Manager Monica Galvan, TCEQ Mickey Leland Intern Lorena Astudillo, and Plant Manager for Milwhite Inc. Victor Fernandez and Safety Coordinator for Milwhite Inc. Rogelio Valdez.

Daily Narrative

On July 13, 2022, Victoria Trummel and Michael Flores arrived at the Milwhite Inc., Brownsville Facility ("regulated entity" or "facility") and met with Victor Fernandez and Rogelio Valdez to discuss the status of the outstanding alleged violations associated with Investigation Number 1880582.

At this time, the regulated entity remained non-complaint with violation track numbers 840106, 840118, 840119, 840120, and 840325 (For violation details, see Summary of Investigation Findings in Attachment A). The regulated entity had not provided any correspondence, proof of compliance, or corrective action plans by the compliance due date of July 12, 2023, and did not provide this information during the site visit on July 13, 2023.

After discussing the status of the outstanding violations, the investigator informed Mr. Fernandez and Mr. Valdez that they would be conducting an Air Complaint Investigation and a NMNC investigation to determine compliance with applicable air quality regulations. The investigator reviewed each Special Condition of Air New Source Review (NSR) Permit number 7537 with Mr. Fernandez and Mr. Valdez. All records and proof of compliance with Air NSR Permit 7537 were requested. Mr. Valdez provided three production sheets from July 12, 2023 (Attachment B) and stated that he would email the rest of the requested records by Monday July 17, 2023. The investigator told Mr. Fernandez and Mr. Valdez that an Exit Interview Form with a checklist of requested records would be provided via email.

After the records review, the investigators conducted the site inspection. During the site inspection, it was determined that the regulated entity was processing Barite and Bentonite clay. The area around the processing building was blanketed with a finely milled, beige-colored powder that was produced as a result of the mineral storage and processing conducted at this facility. The investigators noted that the walls, floors, all the equipment, and the surrounding area was covered in a dense coating of finely milled, beige-colored powder. The investigators noticed piles of this material beneath the Baghouses, the Grinder Dryers, the Bulk Storage Tanks, the Railcar Loading area, and all throughout the processing building and outside of the processing building. The investigators noted that the hooding, duct, and collection systems in the processing building appeared to be damaged. Parts of the equipment were seen taped together with duct tape. Although the facility was not in operation at the time, it was apparent that the equipment was in need of repair. These observations demonstrated that the regulated entity was not in compliance with Special Conditions 19, 22, and 23 of NSR Permit No. 7537 as described in the Additional Information section of this investigation report and as documented in photos 1- 5 in Attachment C.

When inspecting the Railcar Loading equipment, the investigators noted that there were piles of finely milled, beige-colored powder beneath the loading point. Victor Fernandez attempted to communicate to the investigator that the dust collection system was properly installed and in good working order. However, it could not be confirmed the dust collection system was, in fact, working properly or in good condition at the time. Nevertheless, this observation demonstrated that the regulated entity was not in compliance with Special Condition 19 of NSR Permit No. 7537 as described in the Additional Information section of this investigation report.

When inspecting the stockpiles, it did not appear that the stockpiles were being watered. Victor Fernandez informed investigators that the sprinkler system that watered the stockpiles had been damaged and needed to be repaired. Additionally, the dust control records provided in Attachment F - Dust Control confirmed that the entity had not been using the sprinkler system to water the stockpiles. These observations demonstrated that the regulated entity was not in compliance with Special Condition 21 of NSR Permit No. 7537 as described in the

Additional Information section of this investigation report and documented in photo 6 in Attachment C.

On July 17, 2023, a TCEQ Exit Interview Records Request was emailed to Mr. Fernandez and Mr. Valdez with a due date of July 21, 2023, to provide the requested records (Attachment D).

On July 14, 2023, and July 21, 2023, Rogelio Valdez provided a portion of the requested records and responded to several of the questions in the Checklist attached to the Exit Interview Records Request. A majority of the requested records were not provided, and several records provided were not relevant or the record was indecipherable. The Exit Interview Records Request and attached compliance assessing Checklist reviewing each special condition of Air NSR Permit 7537 can be seen in Attachment D.

Email correspondence from the entity, received on July 14, 2023, can be seen in Attachment E.

Email correspondence from the entity, received on July 21, 2023, can be seen in Attachment F.

A summary of observations from the review of facility records is provided below.

The cleaning records provided for June 25, 2023 - July 1, 2023 (See Attachment F - Dust Control), reported cleaning activities on each of these seven days; however, observations made during the site assessments conducted during the July 13, 2023, and July 27, 2023 on site assessments, revealed that spillage of all material used in the process was not being immediately cleaned up, contained, and dampened. The investigator also observed that equipment, including the hooding, duct and collection systems in the processing building, baghouses for grinder driers, and filters for the bulk storage tanks were in various states of disrepair that cleaning activities, if any, are rendered ineffective due to the high quantity of material spillage coming from the damaged equipment. Additionally, the investigator observed piles of dust under the railcar loading area that demonstrated the regulated entity was not immediately cleaning, containing, or dampening spillage in this area. These observations demonstrated that the regulated entity was not in compliance with Special Condition 19 of NSR Permit No. 7537 as described in the Additional Information section of this investigation report and documented in photos 7 - 20 in Attachment C.

The operation hours provided in the document titled Corrective Actions (TCEQ) in Attachment E showed that the entity had documented daily operating hours for the months of June 2023 during which several days had exceeded the 20-hour maximum operating hours per day. According to the provided records, the entity operated over 20 hours per day on June 1st - 4th, June 6th, June 12th, June 20th, June 28th and June 30th. This observation demonstrated that the regulated entity was not in compliance with Special Condition 10 of Air NSR Permit No. 7537 as described in the Additional Information section of this investigation report.

Height measurements provided for the vertical stacks for the Dryer Baghouse Stacks and Grinder Baghouse Stacks were provided and determined to be 46 feet 2 inches above ground level and did not meet the 50-foot requirement as required by Special Condition 14 Air NSR Permit 7537. See Attachment F - Vertical stacks.pptx.

Additionally, in the Exit interview form and associated checklist provided on July 17, 2023 (Attachment D) the facility was notified to begin performing ambient air monitoring and testing to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere as per Special Condition 26 of Air Permit No. 7537. This request was made with the approval of TCEQ Harlingen Regional Management. No monitoring or testing documented was provided.

In the Exit interview form and associated checklist provided on July 17, 2023 (Attachment D), the investigator also requested the following records:

Records demonstrating observations for visible emissions were performed and recorded quarterly for the fourth quarter of year 2022, to date as required by Special Condition 6 of NSR Permit 7537. These records were not provided.

Records demonstrating that pipeline sweet natural gas is utilized for the mill dryers as required by Special Condition 3 of NSR Permit 7537. On July 21, 2023, entity personnel provided a document that was not relevant to this condition and the last two pages of the document were not decipherable as seen in Analysis of the Fuel - Attachment F.

Records demonstrating that visible emission determinations were performed on the fabric filter baghouse stacks during normal plant operations and the results were recorded quarterly as required by Special Condition 7 of NSR Permit 7537. To date, the entity has not demonstrated they are performing visible emissions observations. Additionally, records for year 2022, to date, have not been provided to the TCEQ.

Filter specifications for Grinder 1 Dryer (EPN 12), Grinder 2 Dryer (EPN 22), Loading (EPN 37), Grinder 3 Dryer (EPN 38), Grinder 3 Bagging (EPN 39) and Bagging (EPN MX BH) demonstrating compliance with Special Condition 15 of Air NSR Permit No. 7537. On July 21, 2023, Rogelio Valdez provided a photo of a filter and a postage sticker (Minardi Filters - Attachment F). The specifications could not be confirmed with this information.

Daily records of the days when baghouses were in use, the differential pressure measurements, documentation of the manufacturer's recommendations, engineering calculation, historical data, or the most recent performance test data, and calibration records for each monitoring device as required by Special Condition 27 of Air NSR Permit No. 7537. Records for January 2022, to present, were requested. On July 13, 2023, Victor Fernandez (Plant Manager) provided documentation of the differential pressure measurements that were taken on July 12, 2023 (Attachment B). Additional records were not provided.

Daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year and actual hours of operation as required by Special Conditions 28 (B) and 28 (C) of Air NSR Permit Number 7537. On July 14, 2023, Rogelio Valdez (entity personnel) provided daily amounts of materials processed and hours of operation for the month of June 2023 as seen in Corrective Actions (TCEQ) - Attachment E. Records dating back to January 2022 were requested. Additional records were not provided.

A copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment as required by Special Condition 28 (H) of Air NSR Permit Number 7537. On July 14, 2023, Rogelio Valdez (entity personnel) provided an Annual Maintenance Schedule seen in Attachment E, but it was not the manufacturer's suggested maintenance schedule. A copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment has not been provided.

On July 24, 2023, Victoria Trummel, Lorena Astudillo, Matthew Briseno and Harlingen Regional Section Manager Monica Galvan arrived at one of the complainant's properties to discuss the complaint. The regulated entity in question was not in operation at the time, but there was still a haze of dust that was observed emitting off the regulated entity's property and migrating onto the complainant's property. Investigator observations during this time confirmed that fugitive dust emissions were caused by wind erosion of the spilled material that had been previously observed in the area of the Processing Building and the Railcar Loading area, as well wind erosion from the stockpiles that were not being watered (observed on July 13, 2023, by Investigators). These observations demonstrated that the regulated entity was not in compliance with Special Condition 25 of NSR Permit No. 7537 and Title 30 of the Texas Administrative Code (30 TAC) rule §101.4 as described in the Additional Information section of this investigation report.

On July 27, 2023, Victoria Trummel, Michael Flores and Lorena Astudillo arrived at the regulated entity to observe the facility while in operation. During the investigation, the investigators noted that the hooding, duct, and collection systems in the processing building were not effective at capturing emissions from the equipment and in preventing fugitive emissions from the building. The equipment was still damaged and emitting dust from several points causing piles of dust to accumulate beneath the equipment and causing dust to accumulate on every surface within the warehouse and outside of the warehouse. These observations demonstrated that the regulated entity was not in compliance with Special Conditions 19, 22, and 23 of NSR Permit No. 7537 as described in the Additional Information section of this investigation report and as documented in photos 7 - 20 in Attachment C.

It was also documented that there was still a pile of dust beneath the Railcar Loading equipment. Further evaluation of the railcar loading equipment could not be made due to the safety concerns related to climbing; however, the amount of dust observed suggested that abatement equipment associated with the rail care is not in good working order. Nevertheless, this observation demonstrated that the regulated entity was not in compliance with Special Condition 19 of NSR Permit No. 7537 as described in the Additional Information section of this investigation report and as documented in photos 24 and 25 in Attachment C.

Two staff were seen shoveling and sweeping some of the spilled material underneath the bulk storage tanks, but it was apparent that as they were cleaning, the tank was continually emitting dust from tears in the fabric filters and

some of the fabric filters did not appear to be properly installed. This observation demonstrated that the regulated entity was not in compliance with Special Conditions 15 and 19 of NSR Permit No. 7537 as described in the Additional Information section of this investigation report and as documented in photos 26 and 27 in Attachment C.

It was documented that the north-east facing doors on the processing building and the north facing doors on Warehouse 1 were not closed while in operation. This observation demonstrated that the regulated entity was not in compliance with Special Condition 23 of NSR Permit No. 7537 as described in the Additional Information section of this investigation report and as documented in photos 22 and 23 in Attachment C.

The investigators also noted that the wall on the north side of the facility which was constructed to prevent dust emissions from impacting the nearby properties was in disrepair. See photo 20 in Attachment C.

Mr. Victor Fernandez stated that they were working towards resolving the issues and would provide a maintenance plan outlining how they were working towards coming into compliance. Victor Fernandez stated that they had purchased materials to increase the height of the vertical stack and repair the metal wall and that they were having staff clean some of the spilled material. No detailed maintenance plan was provided.

On July 28, 2023, Michael Flores documented visible dust emissions leaving the regulated entity's property and impacting the complainant's properties. The emissions were documented emanating from the processing building located directly behind one of the complainants' properties. The emissions appeared to be composed of a beige powder that was further illuminated by the moonlight and the lights on the processing building as seen in the video screenshots in Attachment I.

Throughout the investigation, the complainants stated that the dust emissions did not allow for normal use and enjoyment of their property and contributed to skin irritation, respiratory irritation, and asthma. They stated that the dust made it impossible to maintain a clean home exterior. They could no longer prevent the dust from entering their homes when opening doors and windows. They needed to replace home air filters every few days to be comfortable inside their home. They stated that they felt like prisoners in their own homes because they were unable to enjoy being outside in their yard and the dust made them feel uncomfortable when outside. They stated that their children and grandchildren could not play outside without the dust negatively affecting them by making them feel ill, with reported symptoms as rashes, runny nose, and itchy/watery eyes. Several complainants stated that they recently started to develop skin and respiratory irritation due to the excessive dust in the air and on their property. These observations demonstrated that the regulated entity was not in compliance with Special Condition 25 of NSR Permit No. 7537 and Title 30 of the Texas Administrative Code (30 TAC) rule §101.4 as described in the Additional Information section of this investigation report.

Environmental weather conditions for July 13, July 24, July 27, and July 28 can be seen in Attachment G.

Exit Interview

On July 17, 2023, a TCEQ Exit Interview Records Request was emailed to Mr. Fernandez and Mr. Valdez (Attachment D). Additionally on August 1, 2023, the entity was notified of preliminary results of the investigation and that the violations documented warrant a formal enforcement action (Attachment J).

GENERAL FACILITY AND PROCESS INFORMATION

Process Description

Raw material is transported from the storage piles to the relocated jaw crusher, which operates on an on-demand basis, by front end loader. The crushing facility is operated inside a partially enclosed building. The crushed material is then transported by front end loader to the receiving hoppers located in the hopper heed, where ore is moved by fully enclosed belt conveyors to enclosed surge bins located in the processing building. Final size reduction is conducted using the Raymond Milling process. This process consists of an enclosed system under negative pressure. The material is ground to a sized that allows it to be entrained in a continuous stream of air. The air flows through a cyclone to separate the ground material from the air stream. Air from the cyclone is recirculated back to each mill with a small volume being removed to two baghouses (EPN's 12 and 22) to maintain negative pressure in the system. The material is transferred through several enclosed transfer points either to bagging hoppers in the building or to five bulk storage tanks located outside the building.

In addition to the grinding process, each mill contains a heater that is used to dry the product during grinding when needed. Additionally, Brownsville Facility has the ability to receive nonmetallic minerals that have undergone primary crushing at another facility. The received crushed material will be conveyed directly to the grinder hopper that feeds the Raymond mills bypassing the jaw crusher. Final product is delivered to consumers in multiple packaging formats. Bags are filled within the building and stored on pallets in the warehouses until shipped to the final consumer. Emissions from the bagging operations for Mills 1 and 2 are controlled by a third baghouse (EPN 37). Ground material is also loaded by/from the outdoor storage tanks into bulk trucks. A hood and suction system capture emission from this form of loadout. The final method used for delivering material is by way of bulk rail cars. The rail cars are filled with a pneumatic system from the storage tanks. The cars are sealed and only vented through a baghouse filter placed on the vent of the rail car.

BACKGROUND

Brownsville Facility is identified in the TCEQ Central Registry as Regulated Entity Number RN102540960, Customer Number CN600505960, Account Number CDO051C, and permit number 7537. The regulated entity has a compliance history rating of "0.50" and a performance classification of "Satisfactory". The customer has a compliance history rating of "0.50" and a performance classification of "Satisfactory".

Seven violations were documented at the entity within the previous five years:

On February 7, 2023, through March 8, 2023, the TCEQ conducted a Complaint Investigation. During the investigation, five alleged violations were documented. A Notice of Violation was issued. Consolidated Compliance and Enforcement Data System (CCEDS) Investigation Number: 1880582; Violation Tracking Numbers: 840106, 840118, 840119, 840120, and 840325; Incident Numbers: 396038, 397183, 396162, 396164, 396036, 396042, 396631, and 397169.

On September 30, 2022, the TCEQ conducted a File Review Follow-Up Investigation. During the investigation, one violation was documented. A Notice of Enforcement was issued. CCEDS Investigation Number: 1847377; Violation Tracking Number: 810963.

On March 31, 2022, through April 14, 2022, the TCEQ conducted a NMNC Investigation. During the investigation one violation was documented. A Notice of Violation was issued. CCEDS Investigation Number: 1813166; Violation Tracking Number: 810963.

A Secretary of State (SOS) Business Inquiry conducted on July 27, 2023, identified Milwhite, Inc., with a status of "In existence" and listed their mailing address as 5487 Padre Island Highway, TX 78521 (Attachment H). Management was last identified on October 11, 2021, as President and Director as Mr. Armando De Leon III. The Secretary and Director was also identified as Mr. Armando De Leon IV.

On August 21, 2023 Rogelio Valdez informed the investigator that Mr. Fernandez was no longer employed by Milwhite, Inc and the new plant manager was now Alberto Farias.

Agreed Orders, Court Orders, and Other Compliance Agreements

There have not been any agreed orders, court orders, and other compliance agreements at this site in the past two years related to air quality.

Prior Enforcement Issues

TCEQ Docket number/Court Order Number 2022-1588-AIR-E - Enforcement Case Number 63358 has been created with a status date of November 11, 2022, with a status of pending.

Complaints

On February 7, 2023, through March 8, 2023, the TCEQ conducted a Complaint Investigation. During the investigation, eight complaints were filed, and five alleged violations were documented. A Notice of Violation was issued. Consolidated Compliance and Enforcement Data System (CCEDS) Investigation Number: 1880582; Violation Tracking Numbers: 840106, 840118, 840119, 840120, and 840325; Incident Numbers: 396038, 397183, 396162, 396164, 396036, 396042, 396631, and 397169.

ADDITIONAL INFORMATION

On-site assessments were conducted during the compliance period of the notice of violation in order to address complainant concerns regarding operations, including operations at night. These assessments were conducted on June 13, 2023, and June 29, 2023.

On June 13, 2023, investigators met with complainants who stated that the entity had recently received an influx of shipments and were operating more than usual. The investigators also observed that the regulated entity had a significant increase in stockpiled material at their site.

During the June 29, 2023, investigators observed that the entity was in operation and dust nuisance was occurring. Dust was seen impacting complainants' property. Additionally, the investigator experienced grittiness and taste of dirt in their mouth while conducting an assessment on the complainant's property. Copies of recent investigation reports conducted by the TCEQ for the regulated entity were provided to complainants during this time.

Conclusions, Recommendations and Current Enforcement Actions

Based on the investigation findings the regulated entity is alleged to be in violation of the following sixteen items, which includes fourteen Special Conditions (out of their twenty-eight Special conditions of NSR Permit number 7537) and one nuisance violation.

Failure to comply with Special Condition 6 of Air NSR Permit number 7537. Track No: 840106

The regulated entity is non-compliant with 30 TAC §116.115(c) which states, "The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document."

The entity failed to meet Special Condition 6 which states that, "There shall be no visible fugitive emissions leaving the property. Observations for visible emissions shall be performed and recorded quarterly. The visible emissions determination shall be made during normal plant operations. Observations shall be made on the downwind property line for a minimum of six minutes. If visible emissions are observed, an evaluation must be accomplished in accordance with EPA 40 CFR Part 60, Appendix A Test Method (TM) 22, using the criteria that visible emissions shall not exceed a cumulative 30 seconds in duration in any six-minute period. If visible emissions exceed the TM 22 criteria, immediate action shall be taken to eliminate the excessive visible emissions. The corrective action shall be documented within 24 business hours of completion."

Specifically, the entity has not implemented practices to ensure visible fugitive emissions do not leave the property. On July 13, 24, and 28 of 2023, visible emissions were observed leaving the property. Additionally, the entity has not submitted records demonstrating observations for visible emissions were performed and recorded for the fourth quarter of 2022, to date.

Furthermore, the regulated entity is non-compliant with Title 5 Subtitle C of the Texas Health and Safety Code (5C THSC) §382.085 (b) which states, "A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order."

Failure to comply with Special Condition 3 of Air NSR Permit Number 7537. Track No: 854974

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 3 which states that, " Fuel for the mill dryers (Emission Point Numbers [EPN] 12, 22 and 38) shall be pipeline quality sweet natural gas. Use of any other fuel will require prior approval of the Executive Director of the Texas Commission on Environmental Quality.

Specifically, On July 17, 2023, the investigators requested that the regulated entity provide proof of compliance with this condition. On July 21, 2023, entity personnel provided a document that was not relevant to this condition and the last two pages of the document were not decipherable. The regulated entity has not shown evidence of compliance with this condition.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 7 of Air NSR Permit Number 7537. Track No: 854978

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 7 which states that, "Opacity of particulate matter emissions from any fabric filter baghouse stack at this plant shall not exceed five percent. A visible emission determination shall be performed on the fabric filter baghouse stacks during normal plant operations and the results recorded quarterly. The visible emissions observations shall be made at least 15 feet and no more than 0.25 mile from the emission point. If visible emissions are observed from the emission point the owner or operator shall:

A. Assume the five percent opacity limit is exceeded, take immediate action to eliminate visible emissions, record the corrective action within 24 hours, and comply with any applicable requirements in 30 Texas Administrative Code (30 TAC) §101.201, Emissions Event Reporting and Record Keeping Requirements; or

B. Determine opacity using 40 CFR Part 60, Appendix A, TM 9. If the five percent opacity limit is exceeded, take immediate action to eliminate visible emissions, record the corrective action within 24 hours, and comply with applicable requirements in 30 TAC §101.201, Emissions Event Reporting and Record Keeping Requirements."

On July 17, 2023, the investigator requested records for year 2022, to date, demonstrating visible emissions determinations are performed on the fabric filter baghouse stacks during normal plant operations with a due date of July 21, 2023. These records have not been provided.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 10 of Air NSR Permit Number 7537. Track No: 854979

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 10 which states that, "The facilities shall be limited to a maximum operating schedule of 20 hours per day, 7 days per week, 52 weeks per year, and 7,280 hours per year. "

On July 13, 2023, Victor Fernandez (Plant Manager) stated that the facility had been operating at a maximum of 22 hours per day. Additionally, in records provided by Rogelio Valdez (entity personnel) on July 14, 2023, the entity had documented daily operating hours for the months of June 2023 during which several days had exceeded the 20-hour maximum operating hours per day. According to the provided records, the entity operated over 20 hours per day on June 1st - 4th, June 6th, June 12th, June 20th, June 28th and June 30th.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 14 of Air NSR Permit Number 7537. Track No: 854983

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 14 which states that, "All fabric filter baghouses shall discharge through vertical stacks protected with rain caps. The Grinder 1 Dryer Baghouse Stack (EPN 12), Grinder

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2 Dryer Baghouse Stack (EPN 22), Grinder 3 Dryer Baghouse Stack (EPN 38) and Grinder 3 Bagging Baghouse Stack (EPN 39) shall each exhaust a minimum of 50 feet above ground level. The Loading Baghouse Stack (EPN 37) and the Bagging Baghouse Stack (EPN MIX-BH) shall exhaust a minimum of 27 feet above ground level."

Specifically, on July 21, 2023, Rogelio Valdez (entity personnel) confirmed that the height of the vertical stacks for the Dryer Baghouse Stacks and Grinder Baghouse Stacks were 46 feet 2 inches above ground level and did not meet the 50-foot requirement. During the site assessment on July 27, 2023, Victor Fernandez (Plant Manager) stated that they had purchased materials to increase the height of the vertical stack and were working towards correcting the non-compliance.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 15 of Air NSR Permit Number 7537. Track No: 854986

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 15 which states that, "Fabric filter baghouses containing bags with a laminate Polyester (ePTFE) membrane and designed to meet an outlet grain loading of not more than 0.002 grains per dry standard cubic feet (gr/dscf) of exhaust each, properly installed and in good working order, shall control particulate matter emissions from the Grinder 1 Dryer (EPN 12), Grinder 2 Dryer (EPN 22), Loading (EPN 37), Grinder 3 Dryer (EPN 38), Grinder 3 Bagging (EPN 39) and Bagging (EPN MX BH) when this equipment is in operation."

Specifically, on July 17, 2023, the investigator requested the filter specifications. On July 21, 2023, Rogelio Valdez provided a photo of a filter and a postage sticker. The specifications could not be confirmed with this information. On July 27, 2023, dust emissions were observed exiting through the baghouses. Additionally, the fabric filter baghouses did not appear to be properly installed and in good working order to control particulate matter emissions.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 19 of Air NSR Permit Number 7537. Track No: 854991

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 19 which states that, "Spillage of any material used in the process shall be immediately cleaned up and contained and dampened such that dust emissions from wind erosion, vehicle traffic, and other fugitive dust emissions are minimized."

Specifically, on July 13, 2023, the investigators observed large piles of dust beneath the Baghouses, the Grinder Dryers, the Bulk Storage Tanks, the Railcar Loading area, and all throughout the processing building and outside of the processing building. Again, on July 27, 2023, the investigators documented that the dust piles, located in the same areas as the July 13, 2023, observations, had not been adequately cleaned.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 21 of Air NSR Permit Number 7537. Track No: 854993

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 21 which states that, "Haul trucks shall operate only on paved and cleaned surfaces. All permanent in-plant roads shall be paved, cleaned and watered to control fugitive dust emissions. Stockpiles and unpaved areas on the property subject to vehicle traffic shall be watered as necessary to achieve maximum control of dust emissions."

Specifically, on July 13, 2023, it did not appear that the stockpiles were being watered. Victor Fernandez (Plant

Manager) stated that the sprinkler system that watered the stockpiles had been damaged and needed to be repaired. The stockpile sprinkler system has yet to be repaired. Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 22 of Air NSR Permit Number 7537. Track No: 854999

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 22 which states that, "All air pollution abatement equipment shall be properly maintained and operated during the operation of these facilities. Cleaning and maintenance of the abatement equipment shall be performed as necessary so that the equipment efficiency can be adequately maintained. "

Specifically, on July 13, 2023, the investigators observed that the area around the processing building was blanketed with a finely milled, beige-colored powder that was produced as a result of the mineral storage and processing conducted at this facility. The investigators noted that the walls, floors, all the equipment, and the surrounding area was covered in a dense coating of finely milled, beige-colored powder. The investigators noticed piles of this material beneath the Baghouses, the Grinder Dryers, the Bulk Storage Tanks, the Railcar Loading area, and all throughout the processing building and outside of the processing building. The investigators noted that the hooding, duct, and collection systems in the processing building appeared to be damaged. Parts of the equipment were seen taped together with duct tape.

Then on July 27, 2023, the investigators also observed that equipment, including the hooding, duct and collection systems in the processing building, baghouses for grinder driers, and filters for the bulk storage tanks were in various states of disrepair. One filter had visible tears, and one appeared to be installed improperly. The Hooding, Duct and Collection Systems that connect the mill, mill dryers, baghouses, bagging hoppers, and the bulk storage tanks appeared to have holes, cracks, and other conditions that would reduce the collection efficiency of the emission capture system. Dust emissions were observed exiting the equipment through holes, cracks, and other conditions in several areas. Some parts of the equipment were seen duct taped together. It appeared that the equipment needed to be repaired and had not been properly maintained.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 23 of Air NSR Permit Number 7537. Track No: 855004

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 23 which states that, "All hooding, duct, and collection systems shall be effective in capturing emissions from this equipment and in preventing fugitive emissions from the building. The hooding and duct system shall be maintained free of holes, cracks, and other conditions that would reduce the collection efficiency of the emission capture system. While the plant is in operation, the grinding buildings shall be kept totally closed on the north side except for short periods of entering and exiting. The north side of this building shall not have holes, tears, or separated siding where dust can escape. All seals on external augers transferring ground material shall not leak any material."

Specifically on July 27, 2023, The Hooding, Duct and Collection Systems that connect the mill, mill dryers, baghouses, bagging hoppers, and the bulk storage tanks appeared to have holes, cracks, and other conditions that would reduce the collection efficiency of the emission capture system. Dust emissions were observed exiting the equipment through holes, cracks, and other conditions in several areas. Some parts of the equipment were seen duct taped together. It appeared that the equipment needed to be repaired and had not been properly maintained. Additionally, the north-east facing doors on the processing building and the north facing doors on Warehouse 1 were not closed while in operation.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 26 of Air NSR Permit Number 7537. Track No: 855005

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 26 which states that, "Upon request by the TCEQ Executive Director or the TCEQ Regional Director having jurisdiction, the holder of this permit shall perform ambient air monitoring, and/or other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere. The tests shall be performed during normal operation of the facilities and shall be performed in accordance with accepted TCEQ practices and procedures. "

Specifically, on July 17, 2023, the facility was notified to begin performing ambient air monitoring and testing to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere. This request was made with the approval of TCEQ Harlingen Regional Management. No monitoring or testing documented was provided.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 27 of Air NSR Permit Number 7537. Track No: 855006

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 27 which states that, "The differential pressure across each baghouse shall be continuously monitored and recorded at least once each day that the baghouse is in operation. The minimum and maximum pressure drop shall be established using the manufacturer's recommendations, engineering calculation, historical data, or the most recent performance test data. Documentation shall be maintained with the permit records providing the methodology used to determine the minimum and maximum pressure drop allowed. Each monitoring device shall be calibrated at a frequency in accordance with the manufacturer's specifications or at least annually, whichever is more frequent, and shall be accurate within 0.5 inch of water gauge pressure or 0.5 percent of span. Quality assurance data must be generated when the plant is operating except during the performance of a daily zero check."

Specifically, on February 14, 2023, the investigator requested records of days when baghouses were in use, the concurrent baghouse pressure drop measurements, and the specified calibration data for 2022 to date. Then on July 13, 2023, after receiving no response from the regulated entity, the investigators arrived at the facility to follow up on the outstanding alleged violations. Victor Fernandez (Plant Manager) provided documentation of the differential pressure measurements that were taken on July 12, 2023.

On July 17, 2023, the investigator requested daily records of the days when baghouses were in use, the differential pressure measurements, documentation of the manufacturer's recommendations, engineering calculation, historical data, or the most recent performance test data, and calibration records for each monitoring device. Records for January 2022, to present, were requested. These records were not provided.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with Special Condition 28 of Air NSR Permit Number 7537. Track No: 855008

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 28 (B), (C), and (H) which states that the following records (totaled for each calendar year and retained for a rolling 24-month period) shall be maintained:

B. Daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year;

C. Actual hours of operation;

H. A copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment.

On July 17, 2023, the investigator requested daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year. The investigator also requested actual hours of operation and a copy of the manufacturer's suggested cleaning and maintenance schedule for abatement

equipment. On July 14, 2023, Rogelio Valdez (entity personnel) provided daily amounts of materials processed and hours of operation for the months of June 2023. Records dating back to January 2022 were requested. Additional records were not provided. A copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment has not been provided.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with 5C THSC §382.085 (a). Track No: 855014

The regulated entity is non-compliant with 5C THSC §382.085 (a) which states, "(a) person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution."

On July 28, 2023, TCEQ investigator experienced the following symptoms while conducting field assessments on a complainant's property, located adjacent to the facility: headache, dry irritated throat, watery left eye, the taste of dirt, grainy texture in the mouth, and coughing. The symptoms persisted approximately 30-45 minutes after leaving the area.

Failure to comply with Special Condition 25 for NSR Permit Number 7537. Track No: 840119

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the regulated entity failed to meet Special Condition 25 for NSR Permit Number 7537 which states, "This facility shall not produce a nuisance that may cause or contribute to a condition of "air pollution" as defined in 30 TAC §101.4 as adopted by the TCEQ." The regulated entity failed to prevent the discharge of air contaminants in a concentration and duration that adversely affects human health and welfare and interferes with the normal use and enjoyment of property.

Throughout the investigation, complainants stated that the dust emissions did not allow for normal use and enjoyment of their property and contributed to skin irritation, respiratory irritation, and asthma. They stated that the dust was made it impossible to maintain a clean home exterior. They could no longer prevent the dust from entering their homes when opening doors and windows. They needed to replace home air filters every few days to be comfortable inside their home. They stated that they felt like prisoners in their own homes because they were unable to enjoy being outside in their yard and the dust made them feel uncomfortable when outside. They stated that their children and grandchildren could not play outside without the dust negatively affecting them by making them feel ill, with reported symptoms as rashes, runny nose, and itchy/watery eyes. Several complainants stated that they recently started to develop skin and respiratory irritation due to the excessive dust in the air and on their property.

Of note, on April 4, 2023, laboratory analysis confirmed that the dust collected at the complainants' residences and the regulated entity were consistent. Additionally, the elements found in those samples were not detected elsewhere and likely did not originate from an alternative source. The elements detected likely originated from the Barite and Celestite processed at the facility. According to the TCEQ toxicology department, Barite and Celestite in dust have the potential to cause irritation to the eyes and/or respiratory tract and skin irritation after exposure to large amounts.

On July 24, 2023, investigators observed a haze of dust emanating from the regulated entity towards the complainant's property when the facility was not in operation. This observation confirmed that fugitive dust emissions were coming from wind erosion of the spilled material that had been previously observed in the area of the Processing Building and the Railcar Loading area, as well wind erosion from the stockpiles that were not being watered (observed on July 13, 2023, by Investigators).

On July 28, 2023, TCEQ investigators observed dust leaving the facility towards the complainants' residences, impacting the residences. The dust was in the form of a fine, light brown dust throughout the complainants' properties.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (a) which states, "(a) person may not

cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution."

On July 28, 2023, TCEQ investigator experienced the following symptoms while conducting field assessments on a complainant's property, located adjacent to the facility, headache, dry irritated throat, watery left eye, the taste of dirt, grainy texture in the mouth, and coughing. The symptoms persisted approximately 30-45 minutes after leaving the area.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Failure to comply with 30 TAC §101.4. Track No: 840325

Failure to comply with 30 TAC §101.4 which states no person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

Specifically, the regulated entity failed to prevent the discharge of air contaminants in a concentration and duration that adversely affects human health and welfare and interferes with the normal use and enjoyment of property. Throughout the investigation, complainants stated that the dust emissions did not allow for normal use and enjoyment of their property and contributed to skin irritation, respiratory irritation, and asthma. They stated that the dust was made it impossible to maintain a clean home exterior. They could no longer prevent the dust from entering their homes when opening doors and windows. They needed to replace home air filters every few days to be comfortable inside their home. They stated that they felt like prisoners in their own homes because they were unable to enjoy being outside in their yard and the dust made them feel uncomfortable when outside. They stated that their children and grandchildren could not play outside without the dust negatively affecting them by making them feel ill, with reported symptoms as rashes, runny nose, and itchy/watery eyes. Several complainants stated that they recently started to develop skin and respiratory irritation due to the excessive dust in the air and on their property.

Of note, on April 4, 2023, laboratory analysis confirmed that the dust collected at the complainants' residences and the regulated entity were consistent. Additionally, the elements found in those samples were not detected elsewhere and likely did not originate from an alternative source. The elements detected likely originated from the Barite and Celestite processed at the facility. According to the TCEQ toxicology department, Barite and Celestite in dust have the potential to cause irritation to the eyes and/or respiratory tract and skin irritation after exposure to large amounts.

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On July 28, 2023, TCEQ investigators observed dust leaving the facility towards the complainants' residences, impacting the residences. The dust was in the form of a fine, light brown dust throughout the complainants' properties.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (a) which states, "(a) person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution."

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CCEDS violation tracking numbers 840106, 840119, and 840325, are repeat violation with a violation category of

1A as per the TCEQ Enforcement Initiation Criteria (EIC), Revision No. 17, Effective September 1, 2020, and will be formally referred to the TCEQ Enforcement Division. Specifically, TCEQ EIC category 1A is a Category B violation documented at the regulated entity during two consecutive investigations (not including the investigation to close an NOV) within the most recent 5-year period ("repeated"), unless otherwise noted (e.g., B18.a.9). These repeat violations are from the same location and are documented in two consecutive on-site investigations, they are, February 2023 (Investigation No. 1880582) and July 2023 (Investigation No. 1917795). This repeat violation warrants an enforcement action referral (EAR).

A Notice of Enforcement Letter will be sent to the regulated entity for the aforementioned alleged violations via United States Postal Service (USPS) Certified mail, USPS first class mail, and via email.

Additional Issues

No additional issues were noted.

NOE Date: 8/31/2023

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

Track Number: 840106

Compliance Due Date: To Be Determined

Violation Start Date: 2/14/2023

**30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)**

Alleged Violation:

Investigation: 1880582

Comment Date: 06/12/2023

Failure to comply with the special conditions contained in the permit document.

The regulated entity is non-compliant with Title 30 of the Texas Administrative Code (30 TAC) §116.115(c) which states, "The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document."

Specifically, the entity failed to meet Special Condition 6 for Permit Number 7537 which states that, "There shall be no visible fugitive emissions leaving the property. Observations for visible emissions shall be performed and recorded quarterly."

On February 24, 2023, visible dust emissions were observed leaving the regulated entity's property. Additionally, on February 14, 2023, the investigators requested records of the quarterly observations for visible emissions and/or opacity for 2022 to date. The investigators requested the records be submitted no later than February 17th. Then, on April 11, 2023, Mr. Victor Fernandez provided records of the quarterly observations for visible emissions and/or opacity observations for the first, second and third quarters of 2022, but failed to include the 2022 fourth quarter records.

Furthermore, the regulated entity is non-compliant with Texas Health and Safety Code §382.085 (b) which states, "A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order."

Investigation: 1917795

Comment Date: 08/22/2023

Failure to comply with Special Condition 6 of Air NSR Permit number 7537.

The entity failed to meet Special Condition 6 which states that, "There shall be no visible fugitive emissions leaving the property. Observations for visible emissions shall be performed and recorded quarterly. The visible emissions determination shall be made during normal plant operations. Observations shall be made on the

downwind property line for a minimum of six minutes. If visible emissions are observed, an evaluation must be accomplished in accordance with EPA 40 CFR Part 60, Appendix A Test Method (TM) 22, using the criteria that visible emissions shall not exceed a cumulative 30 seconds in duration in any six-minute period. If visible emissions exceed the TM 22 criteria, immediate action shall be taken to eliminate the excessive visible emissions. The corrective action shall be documented within 24 business hours of completion."

Specifically, the entity has not implemented practices to ensure visible fugitive emissions do not leave the property. On July 13, 24, and 28 of 2023, visible emissions were observed leaving the property. Additionally, the entity has not submitted records demonstrating observations for visible emissions were performed and recorded for the fourth quarter of 2022, to date.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall implement practices to ensure visible fugitive emissions shall not leave the property. Additionally, the entity shall submit records demonstrating observations for visible emissions were performed and recorded quarterly for the fourth quarter of year 2022, to date. The entity shall provide the following documentation to the TCEQ.

Submit documentation which demonstrates the entity has implemented practices to ensure visible fugitive emissions do not leave the property.

Submit documentation demonstrating observations for visible emissions were performed and recorded quarterly for the fourth quarter of year 2022, to date.

Track Number: 840119

Compliance Due Date: To Be Determined

Violation Start Date: 2/14/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1880582

Comment Date: 06/09/2023

Failure to comply with the special conditions contained in the permit document.

The regulated entity is non-compliant with 30 TAC §116.115(c) which states, "The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document."

Specifically, the regulated entity failed to meet Special Condition 25 for Permit Number 7537 which states, "This facility shall not produce a nuisance that may cause or contribute to a condition of "air pollution" as defined in 30 TAC §101.4 as adopted by the TCEQ."

The regulated entity failed to prevent the discharge of air contaminants in a concentration and duration that adversely affects human health and welfare and interferes with the normal use and enjoyment of property.

Throughout the investigation, complainants stated that the dust buildup did not allow for normal use and enjoyment of their property, the dust on their windows impeded their ability to clearly view out of their homes, the dust prevented them from maintaining a clean home exterior, the dust contributed to skin irritation, respiratory irritation and asthma, the dust made it so that they had to change the air filters in their homes on a nearly weekly basis to ensure they could breathe within their homes, and the dust made it so that they were unable to open their windows without dust entering their homes. Additionally, samples obtained and analyzed by the TCEQ confirmed material stored and processed by the regulated entity had left the regulated entity property and impacted off property receptors (complainant's properties).

On February 14, February 24, and February 27 of 2023, the investigators documented air contaminants, in the form of a fine, light brown dust throughout the complainants' properties. On February 14 and February 24,

2023, the investigators documented dust leaving the facility towards the complainants' residences. On April 4, 2023, laboratory analysis confirmed that the dust collected at the complainants' residences and the regulated entity were consistent. Additionally, the elements found in those samples were not detected elsewhere and likely did not originate from an alternative source. The elements detected likely originated from the Barite and Celestite processed at the facility. According to the TCEQ toxicology department, Barite and Celestite in dust have the potential to cause irritation to the eyes and/or respiratory tract and skin irritation after exposure to large amounts.

Furthermore, the regulated entity is non-compliant with Texas Health and Safety Code §382.085 (b) which states, "A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order."

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 25 for NSR Permit Number 7537

The regulated entity is non-compliant with 30 TAC §116.115(c) which states, "The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document."

Specifically, the regulated entity failed to meet Special Condition 25 for NSR Permit Number 7537 which states, "This facility shall not produce a nuisance that may cause or contribute to a condition of "air pollution" as defined in 30 TAC §101.4 as adopted by the TCEQ." The regulated entity failed to prevent the discharge of air contaminants in a concentration and duration that adversely affects human health and welfare and interferes with the normal use and enjoyment of property.

Throughout the investigation, complainants stated that the dust emissions did not allow for normal use and enjoyment of their property and contributed to skin irritation, respiratory irritation, and asthma. They stated that the dust was made it impossible to maintain a clean home exterior. They could no longer prevent the dust from entering their homes when opening doors and windows. They needed to replace home air filters every few days to be comfortable inside their home. They stated that they felt like prisoners in their own homes because they were unable to enjoy being outside in their yard and the dust made them feel uncomfortable when outside. They stated that their children and grandchildren could not play outside without the dust negatively affecting them by making them feel ill, with reported symptoms as rashes, runny nose, and itchy/watery eyes. Several complainants stated that they recently started to develop skin and respiratory irritation due to the excessive dust in the air and on their property.

Of note, on April 4, 2023, laboratory analysis confirmed that the dust collected at the complainants' residences and the regulated entity were consistent. Additionally, the elements found in those samples were not detected elsewhere and likely did not originate from an alternative source. The elements detected likely originated from the Barite and Celestite processed at the facility. According to the TCEQ toxicology department, Barite and Celestite in dust have the potential to cause irritation to the eyes and/or respiratory tract and skin irritation after exposure to large amounts.

On July 24, 2023, investigators observed a haze of dust emanating from the regulated entity towards the complainant's property when the facility was not in operation. This observation confirmed that fugitive dust emissions were coming from wind erosion of the spilled material that had been previously observed in the area of the Processing Building and the Railcar Loading area, as well wind erosion from the stockpiles that were not being watered (observed on July 13, 2023, by Investigators).

On July 28, 2023, TCEQ investigators observed dust leaving the facility towards the complainants' residences, impacting the residences. The dust was in the form of a fine, light brown dust throughout the complainants' properties.

Furthermore, the regulated entity is non-compliant with Title 5 Subtitle C of the Texas Health and Safety Code (5C THSC) §382.085 (a) which states, "(a) person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution."

On July 28, 2023, TCEQ investigator experienced the following symptoms while conducting field assessments on

a complainant's property, located adjacent to the facility, headache, dry irritated throat, watery left eye, the taste of dirt, grainy texture in the mouth, and coughing. The symptoms persisted approximately 30-45 minutes after leaving the area.

Recommended Corrective Action: The entity shall implement practices to ensure they do not cause a nuisance. The entity shall submit documentation to the TCEQ which demonstrates that they are implementing practices to mitigate nuisance conditions.

Track Number: 840325

Compliance Due Date: To Be Determined

Violation Start Date: 2/14/2023

30 TAC Chapter 101.4

5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1880582

Comment Date: 06/09/2023

Failure to comply with 30 TAC §101.4 which states no person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

Specifically, the regulated entity failed to prevent the discharge of air contaminants in a concentration and duration that adversely affects human health and welfare and interferes with the normal use and enjoyment of property.

Throughout the investigation, complainants stated that the dust buildup did not allow for normal use and enjoyment of their property, the dust on their windows impeded their ability to clearly view out of their homes, the dust prevented them from maintaining a clean home exterior, the dust contributed to skin irritation, respiratory irritation and asthma, the dust made it so that they had to change the air filters in their homes on a nearly weekly basis to ensure they could breathe within their homes, and the dust made it so that they were unable to open their windows without dust entering their homes. Additionally, samples obtained and analyzed by the TCEQ confirmed material stored and processed by the regulated entity had left the regulated entity property and impacted off property receptors (complainant's properties).

On February 14, February 24, and February 27 of 2023, the investigators documented air contaminants, in the form of a fine, light brown dust throughout the complainants' properties. On February 14 and February 24, 2023, the investigators documented dust leaving the facility towards the complainants' residences. On April 4, 2023, laboratory analysis confirmed that the dust collected at the complainants' residences and the regulated entity were consistent. Additionally, the elements found in those samples were not detected elsewhere and likely did not originate from an alternative source. The elements detected likely originated from the Barite and Celestite processed at the facility. According to the TCEQ toxicology department, Barite and Celestite in dust have the potential to cause irritation to the eyes and/or respiratory tract and skin irritation after exposure to large amounts.

Furthermore, the regulated entity is non-compliant with Texas Health and Safety Code §382.085 (b) which states, "A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order."

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with 30 TAC §101.4 which states no person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

Specifically, the regulated entity failed to prevent the discharge of air contaminants in a concentration and

duration that adversely affects human health and welfare and interferes with the normal use and enjoyment of property. Throughout the investigation, complainants stated that the dust emissions did not allow for normal use and enjoyment of their property and contributed to skin irritation, respiratory irritation, and asthma. They stated that the dust was made it impossible to maintain a clean home exterior. They could no longer prevent the dust from entering their homes when opening doors and windows. They needed to replace home air filters every few days to be comfortable inside their home. They stated that they felt like prisoners in their own homes because they were unable to enjoy being outside in their yard and the dust made them feel uncomfortable when outside. They stated that their children and grandchildren could not play outside without the dust negatively affecting them by making them feel ill, with reported symptoms as rashes, runny nose, and itchy/watery eyes. Several complainants stated that they recently started to develop skin and respiratory irritation due to the excessive dust in the air and on their property.

Of note, on April 4, 2023, laboratory analysis confirmed that the dust collected at the complainants' residences and the regulated entity were consistent. Additionally, the elements found in those samples were not detected elsewhere and likely did not originate from an alternative source. The elements detected likely originated from the Barite and Celestite processed at the facility. According to the TCEQ toxicology department, Barite and Celestite in dust have the potential to cause irritation to the eyes and/or respiratory tract and skin irritation after exposure to large amounts.

On July 24, 2023, investigators observed a haze of dust emanating from the regulated entity towards the complainant's property when the facility was not in operation. This observation confirmed that fugitive dust emissions were coming from wind erosion of the spilled material that had been previously observed in the area of the Processing Building and the Railcar Loading area, as well wind erosion from the stockpiles that were not being watered (observed on July 13, 2023, by Investigators).

On July 28, 2023, TCEQ investigators observed dust leaving the facility towards the complainants' residences, impacting the residences. The dust was in the form of a fine, light brown dust throughout the complainants' properties.

Furthermore, the regulated entity is non-compliant with Title 5 Subtitle C of the Texas Health and Safety Code (5C THSC) §382.085 (a) which states, "(a) person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution."

On July 28, 2023, TCEQ investigator experienced the following symptoms while conducting field assessments on a complainant's property, located adjacent to the facility, headache, dry irritated throat, watery left eye, the taste of dirt, grainy texture in the mouth, and coughing. The symptoms persisted approximately 30-45 minutes after leaving the area.

Recommended Corrective Action: The entity shall implement practices to ensure they do not cause a nuisance. The entity shall submit documentation to the TCEQ which demonstrates that they are implementing practices to mitigate nuisance conditions.

Track Number: 854974

Compliance Due Date: To Be Determined

Violation Start Date: 7/21/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 3 of Air NSR Permit Number 7537. The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 3 which states that, " Fuel for the mill dryers (Emission Point Numbers [EPN] 12, 22 and 38) shall be pipeline quality sweet natural gas. Use of any other fuel will

require prior approval of the Executive Director of the Texas Commission on Environmental Quality.

Specifically, On July 17, 2023, the investigators requested that the regulated entity provide proof of compliance with this condition. On July 21, 2023, entity personnel provided a document that was not relevant to this condition and the last two pages of the document were not decipherable. The regulated entity has not shown evidence of compliance with this condition.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall provide proof that pipeline sweet natural gas is utilized for the mill dryers.

Track Number: 854978

Compliance Due Date: To Be Determined

Violation Start Date: 7/21/2023

**30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)**

Alleged Violation:

Investigation: 1917795

Comment Date: 08/22/2023

Failure to comply with Special Condition 7 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 7 which states that, "Opacity of particulate matter emissions from any fabric filter baghouse stack at this plant shall not exceed five percent. A visible emission determination shall be performed on the fabric filter baghouse stacks during normal plant operations and the results recorded quarterly. The visible emissions observations shall be made at least 15 feet and no more than 0.25 mile from the emission point. If visible emissions are observed from the emission point the owner or operator shall:

A. Assume the five percent opacity limit is exceeded, take immediate action to eliminate visible emissions, record the corrective action within 24 hours, and comply with any applicable requirements in 30 Texas Administrative Code (30 TAC) §101.201, Emissions Event Reporting and Record Keeping Requirements; or

B. Determine opacity using 40 CFR Part 60, Appendix A, TM 9. If the five percent opacity limit is exceeded, take immediate action to eliminate visible emissions, record the corrective action within 24 hours, and comply with applicable requirements in 30 TAC §101.201, Emissions Event Reporting and Record Keeping Requirements."

On July 17, 2023, the investigator requested records for year 2022, to date, demonstrating visible emissions determinations are performed on the fabric filter baghouse stacks during normal plant operations with a due date of July 21, 2023. These records have not been provided.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall perform visible emissions observations during normal plant operations and the results shall be recorded quarterly. To date, the entity has not demonstrated they are performing visible emissions observations. Additionally, records for year 2022, to date, have not been provided to the TCEQ.

Track Number: 854979

Compliance Due Date: To Be Determined

Violation Start Date: 6/1/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 10 of Air NSR Permit Number 7537. The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 10 which states that, "The facilities shall be limited to a maximum operating schedule of 20 hours per day, 7 days per week, 52 weeks per year, and 7,280 hours per year."

On July 13, 2023, Victor Fernandez (Plant Manager) stated that the facility had been operating at a maximum of 22 hours per day. Additionally, in records provided by Rogelio Valdez (entity personnel) on July 14, 2023, the entity had documented daily operating hours for the months of June 2023 during which several days had exceeded the 20-hour maximum operating hours per day. According to the provided records, the entity operated over 20 hours per day on June 1st - 4th, June 6th, June 12th, June 20th, June 28th and June 30th.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall operate within the maximum authorized operating schedule of 20 hours per day, 7 days per week, 52 weeks per year, and 7,280 hours per year. The entity shall maintain records of their operating schedule and provide proof of compliance with this condition to the TCEQ.

Track Number: 854983

Compliance Due Date: To Be Determined

Violation Start Date: 7/21/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 14 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 14 which states that, "All fabric filter baghouses shall discharge through vertical stacks protected with rain caps. The Grinder 1 Dryer Baghouse Stack (EPN 12), Grinder 2 Dryer Baghouse Stack (EPN 22), Grinder 3 Dryer Baghouse Stack (EPN 38) and Grinder 3 Bagging Baghouse Stack (EPN 39) shall each exhaust a minimum of 50 feet above ground level. The Loading Baghouse Stack (EPN 37) and the Bagging Baghouse Stack (EPN MIX-BH) shall exhaust a minimum of 27 feet above ground level."

Specifically, on July 21, 2023, Rogelio Valdez (entity personnel) confirmed that the height of the vertical stacks for the Dryer Baghouse Stacks and Grinder Baghouse Stacks were 46 feet 2 inches above ground level and did not meet the 50-foot requirement. During the site assessment on July 27, 2023, Victor Fernandez (Plant Manager) stated that they had purchased materials to increase the height of the vertical stack and were working

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towards correcting the non-compliance.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall modify the Dryer Baghouse Stack and Grinder Baghouse Stack heights to ensure the stacks meet the authorized exhaust minimum of 50 feet above ground level. Documentation of these modifications shall be provided to the TCEQ.

Track Number: 854986 **Compliance Due Date: To Be Determined**
Violation Start Date: 7/21/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 15 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 15 which states that, "Fabric filter baghouses containing bags with a laminate Polyester (ePTFE) membrane and designed to meet an outlet grain loading of not more than 0.002 grains per dry standard cubic feet (gr/dscf) of exhaust each, properly installed and in good working order, shall control particulate matter emissions from the Grinder 1 Dryer (EPN 12), Grinder 2 Dryer (EPN 22), Loading (EPN 37), Grinder 3 Dryer (EPN 38), Grinder 3 Bagging (EPN 39) and Bagging (EPN MX BH) when this equipment is in operation."

Specifically, on July 17, 2023, the investigator requested the filter specifications. On July 21, 2023, Rogelio Valdez provided a photo of a filter and a postage sticker. The specifications could not be confirmed with this information. On July 27, 2023, dust emissions were observed exiting through the baghouses. Additionally, the fabric filter baghouses did not appear to be properly installed and in good working order to control particulate matter emissions.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: Provide the fabric filter baghouse filter specifications for the Grinder 1 Dryer (EPN 12), Grinder 2 Dryer (EPN 22), Loading (EPN 37), Grinder 3 Dryer (EPN 38), Grinder 3 Bagging (EPN 39) and Bagging (EPN MX BH). Submit evidence demonstrating that they are installed properly and in good working order to control particulate matter emissions.

Track Number: 854991 **Compliance Due Date: To Be Determined**
Violation Start Date: 7/13/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 19 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

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Specifically, the entity failed to meet Special Condition 19 which states that, "Spillage of any material used in the process shall be immediately cleaned up and contained and dampened such that dust emissions from wind erosion, vehicle traffic, and other fugitive dust emissions are minimized."

Specifically, on July 13, 2023, the investigators observed large piles of dust beneath the Baghouses, the Grinder Dryers, the Bulk Storage Tanks, the Railcar Loading area, and all throughout the processing building and outside of the processing building. Again, on July 27, 2023, the investigators documented that the dust piles, located in the same areas as the July 13, 2023 observations, had not been adequately cleaned.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall clean, contain, and dampen all spilled material used in the process so that dust emissions from wind erosion, vehicle traffic, and other fugitive emissions are minimized. Submit proof of compliance with this condition to the TCEQ.

Track Number: 854993 **Compliance Due Date: To Be Determined**

Violation Start Date: 7/13/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 21 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 21 which states that, "Haul trucks shall operate only on paved and cleaned surfaces. All permanent in-plant roads shall be paved, cleaned and watered to control fugitive dust emissions. Stockpiles and unpaved areas on the property subject to vehicle traffic shall be watered as necessary to achieve maximum control of dust emissions."

Specifically, on July 13, 2023, it did not appear that the stockpiles were being watered. Victor Fernandez (Plant Manager) stated that the sprinkler system that watered the stockpiles had been damaged and needed to be repaired. The stockpile sprinkler system has yet to be repaired.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall repair, replace, or come up with an alternative watering process in order to achieve maximum control of fugitive dust emissions. Documentation of this shall be provided to the TCEQ.

Track Number: 854999 **Compliance Due Date: To Be Determined**

Violation Start Date: 7/13/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 22 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 22 which states that, "All air pollution abatement equipment shall be properly maintained and operated during the operation of these facilities. Cleaning and maintenance of the abatement equipment shall be performed as necessary so that the equipment efficiency can be adequately maintained. "

Specifically, on July 13, 2023, the investigators observed that the area around the processing building was blanketed with a finely milled, beige-colored powder that was produced as a result of the mineral storage and processing conducted at this facility. The investigators noted that the walls, floors, all the equipment, and the surrounding area was covered in a dense coating of finely milled, beige-colored powder. The investigators noticed piles of this material beneath the Baghouses, the Grinder Dryers, the Bulk Storage Tanks, the Railcar Loading area, and all throughout the processing building and outside of the processing building. The investigators noted that the hooding, duct, and collection systems in the processing building appeared to be damaged. Parts of the equipment were seen taped together with duct tape.

Then on July 27, 2023, the investigators also observed that equipment, including the hooding, duct and collection systems in the processing building, baghouses for grinder driers, and filters for the bulk storage tanks were in various states of disrepair. One filter had visible tears, and one appeared to be installed improperly. The Hooding, Duct and Collection Systems that connect the mill, mill dryers, baghouses, bagging hoppers, and the bulk storage tanks appeared to have holes, cracks, and other conditions that would reduce the collection efficiency of the emission capture system. Dust emissions were observed exiting the equipment through holes, cracks, and other conditions in several areas. Some parts of the equipment were seen duct taped together. It appeared that the equipment needed to be repaired and had not been properly maintained.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall properly maintain and operate all air pollution abatement equipment. This includes, but may not be limited, to the following:

Repairing the hooding, duct and collection systems that connect the mill, mill dryers, baghouses, bagging hoppers, and the bulk storage tanks and ensure that they are effective in capturing emissions from this equipment and in preventing fugitive emissions from the building. Additionally, they shall be maintained free of holes, cracks, and other conditions that would reduce the collection efficiency of the emission capture system.

Providing documentation demonstrating that the dust collection system on the Railcar loading is designed to meet an outlet grain loading of not more than 0.01 gr/dscf of exhaust, and is properly installed and in good working order.

Providing documentation demonstrating that the fabric filter baghouses contain bags with a laminate Polyester (ePTFE) membrane and are designed to meet an outlet grain loading of not more than 0.002 grains per dry standard cubic feet (gr/dscf) of exhaust for Grinder 1 Dryer, Grinder 2 Dryer, Loading equipment, Grinder 3 Dryer, Grinder 3 Bagging and Bagging equipment. Additionally, the filters must be installed properly and in good working order to control particulate matter emissions.

Monitoring the differential pressure across each baghouse each day that the baghouse is in operation.

Establishing the minimum and maximum using the manufacture's recommendations, engineering calculation, historical data, or the most recent performance test data. Provide documentation of the methodology used to determine the minimum and maximum pressure drop allowed.

Calibrating each monitoring device at a frequency in accordance with the manufacturer's specifications or at least annually, whichever is more frequent, and shall be accurate within 0.5 inch of water gauge pressure or 0.5 percent of span.

Submit documentation of compliance with the conditions listed above to the TCEQ.

Track Number: 855004

Compliance Due Date: To Be Determined

Violation Start Date: 7/27/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 23 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 23 which states that, "All hooding, duct, and collection systems shall be effective in capturing emissions from this equipment and in preventing fugitive emissions from the building. The hooding and duct system shall be maintained free of holes, cracks, and other conditions that would reduce the collection efficiency of the emission capture system. While the plant is in operation, the grinding buildings shall be kept totally closed on the north side except for short periods of entering and exiting. The north side of this building shall not have holes, tears, or separated siding where dust can escape. All seals on external augers transferring ground material shall not leak any material."

Specifically on July 27, 2023, The Hooding, Duct and Collection Systems that connect the mill, mill dryers, baghouses, bagging hoppers, and the bulk storage tanks appeared to have holes, cracks, and other conditions that would reduce the collection efficiency of the emission capture system. Dust emissions were observed exiting the equipment through holes, cracks, and other conditions in several areas. Some parts of the equipment were seen duct taped together. It appeared that the equipment needed to be repaired and had not been properly maintained. Additionally, the north-east facing doors on the processing building and the north facing doors on Warehouse 1 were not closed while in operation.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: Repair all damaged equipment within the hooding, duct and collection systems that connect the mill, mill dryers, baghouses, bagging hoppers, and the bulk storage tanks. Ensure that the north-east facing doors on the processing building and the north facing doors on Warehouse 1 are closed while in operation. Submit proof of compliance to the TCEQ.

Track Number: 855005

Compliance Due Date: To Be Determined

Violation Start Date: 7/21/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 26 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 26 which states that, "Upon request by the TCEQ Executive Director or the TCEQ Regional Director having jurisdiction, the holder of this permit shall perform ambient air monitoring, and/or other testing as required to establish the actual pattern and quantities of air

contaminants being emitted into the atmosphere. The tests shall be performed during normal operation of the facilities and shall be performed in accordance with accepted TCEQ practices and procedures. "

Specifically, on July 17, 2023, the facility was notified to begin performing ambient air monitoring and testing to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere. This request was made with the approval of TCEQ Harlingen Regional Management. No monitoring or testing documented was provided.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The holder of this permit shall perform ambient air monitoring, and/or other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere. The tests shall be performed during normal operation of the facilities and shall be performed in accordance with accepted TCEQ practices and procedures. Submit proof of compliance to the TCEQ.

Track Number: 855006

Compliance Due Date: To Be Determined

Violation Start Date: 2/14/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 27 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 27 which states that, "The differential pressure across each baghouse shall be continuously monitored and recorded at least once each day that the baghouse is in operation. The minimum and maximum pressure drop shall be established using the manufacture's recommendations, engineering calculation, historical data, or the most recent performance test data. Documentation shall be maintained with the permit records providing the methodology used to determine the minimum and maximum pressure drop allowed. Each monitoring device shall be calibrated at a frequency in accordance with the manufacturer's specifications or at least annually, whichever is more frequent, and shall be accurate within 0.5 inch of water gauge pressure or 0.5 percent of span. Quality assurance data must be generated when the plant is operating except during the performance of a daily zero check."

Specifically, on February 14, 2023, the investigator requested records of days when baghouses were in use, the concurrent baghouse pressure drop measurements, and the specified calibration data for 2022 to date. Then on July 13, 2023, after receiving no response from the regulated entity, the investigators arrived at the facility to follow up on the outstanding alleged violations. Victor Fernandez (Plant Manager) provided documentation of the differential pressure measurements that were taken on July 12, 2023.

On July 17, 2023, the investigator requested daily records of the days when baghouses were in use, the differential pressure measurements, documentation of the manufacturer's recommendations, engineering calculation, historical data, or the most recent performance test data, and calibration records for each monitoring device. Records for January 2022, to present, were requested. These records were not provided.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: The entity shall monitor and record the differential pressure across each baghouse each day that the baghouse is in operation.

The entity shall also establish the minimum and maximum pressure drop using the manufacture's recommendations, engineering calculation, historical data, or the most recent performance test data. Provide

documentation of the methodology used to determine the minimum and maximum pressure drop allowed.

The entity shall calibrate each monitoring device at a frequency in accordance with the manufacturer's specifications or at least annually, whichever is more frequent, and shall be accurate within 0.5 inch of water gauge pressure or 0.5 percent of span.

The entity shall provide Quality assurance data.

Submit proof of compliance of the conditions above to the TCEQ.

Track Number: 855008 **Compliance Due Date: To Be Determined**

Violation Start Date: 7/21/2023

30 TAC Chapter 116.115(c)
5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 1917795

Comment Date: 08/31/2023

Failure to comply with Special Condition 28 of Air NSR Permit Number 7537.

The regulated entity is non-compliant with 30 TAC §116.115(c).

Specifically, the entity failed to meet Special Condition 28 (B), (C), and (H) which states that the following records (totaled for each calendar year and retained for a rolling 24-month period) shall be maintained:

B. Daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year;

C. Actual hours of operation;

H. A copy of the manufacture's suggested cleaning and maintenance schedule for abatement equipment.

On July 17, 2023, the investigator requested daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year. The investigator also requested actual hours of operation and a copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment. On July 14, 2023, Rogelio Valdez (entity personnel) provided daily amounts of materials processed and hours of operation for the months of June 2023. Records dating back to January 2022 were requested. Additional records were not provided. A copy of the manufacturer s suggested cleaning and maintenance schedule for abatement equipment has not been provided.

Furthermore, the regulated entity is non-compliant with 5C THSC §382.085 (b).

Recommended Corrective Action: Provide the records demonstrating daily, monthly, and annual amounts of materials processed, summarized in tons per hour, tons per month, and tons per year, are being maintained. Provide records demonstrating the actual hours of operation and a copy of the manufacturer's suggested cleaning and maintenance schedule for abatement equipment. Provide records demonstrating the manufacturer s suggested cleaning and maintenance schedule for abatement equipment.

Records dating to January 2022 were requested which demonstrate the entity's daily amounts of materials processed and hours of operation. Although records for June 2023 and July of 2023 were submitted, the remaining time frame requested, has not been provided.

The entity shall provide the records to the TCEQ.

Track Number: 855014

Compliance Due Date: To Be Determined

Violation Start Date: 7/28/2023

5C THSC Chapter 382.085(a)

Alleged Violation:

Investigation: 1917795

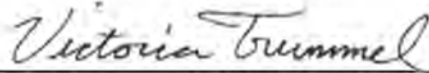
Comment Date: 08/22/2023

The regulated entity is non-compliant with 5C THSC §382.085 (a) which states, "(a) person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution."

On July 28, 2023, TCEQ investigator experienced the following symptoms while conducting field assessments on a complainant's property, located adjacent to the facility: headache, dry irritated throat, watery left eye, the taste of dirt, grainy texture in the mouth, and coughing. The symptoms persisted approximately 30-45 minutes after leaving the area.

Recommended Corrective Action: Ensure that the entity does not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.

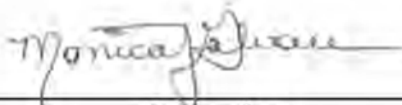
Signed



Environmental Investigator

Date 8/31/2023

Signed



Supervisor

Date 8.31.2023

Attachments: (in order of final report submittal)

Enforcement Action Request (EAR)

Letter to Facility (specify type) : NOE

Investigation Report

Sample Analysis Results

Manifests

Notice of Registration

Maps, Plans, Sketches

Photographs

Correspondence from the facility

Other (specify) :

Attachments A - J

List of Attached files

Attachment I Video.MOV

EXHIBIT C
TCEQ Investigation #1932351
(September 2023)

AIR CP_102540960_CP_20230926_INVESTIGATION_INV 1932351_
COMP CG_CAMERON_CP_20230926_INVESTIGATION
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: Milwhite, Inc.
Customer Number: CN600505960

Regulated Entity Name: BROWNSVILLE FACILITY

Regulated Entity Number: RN102540960

Investigation # 1932351

Incident Numbers

410856	410865
410868	410866
410861	410864
410859	410869
410860	410867
410862	

Investigator: VICTORIA CANTU

Site Classification CASE-BY-CASE

Conducted: 09/12/2023 -- 11/28/2023

NAIC Code: 212312

SIC Code: 1422

SIC Code: 3295

Program(s): AIR NEW SOURCE PERMITS

Investigation Type: Compliance Investigation

Location: 77 S EXIT BOCA CHICA, RIGHT ON
INTERNATIONAL BLVD, TURN RIGHT

Additional ID(s) CD0051C
7537
4806100007

Address: 5487 S PADRE ISLD HWY,
BROWNSVILLE, TX , 78521

Local Unit: REGION 15 - HARLINGEN

Activity Type(s) AIRCOMPL - AIR CMPL - AIR
COMPLAINT INV
NMNC - AIR NMNC - NON-MAJOR
NON-CHECKLISTED
AIR RECON - AIR RECON -
RECONNAISSANCE
INVESTIGATION

Principal(s):

Role	Name
RESPONDENT	MILWHITE INC

Contact(s):

BROWNSVILLE FACILITY - BROWNSVILLE

9/12/2023 to 11/28/2023 Inv. # - 1932351

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Role	Title	Name	Phone	
NOE CONTACT	PRESIDENT	Armando De Leon III	Phone	(956) 547-1970
REGULATED ENTITY CONTACT	PRESIDENT	Armando De Leon III	Phone	(956) 547-1970
REGULATED ENTITY MAIL CONTACT	PRESIDENT	Armando De Leon III	Phone	(956) 547-1970
PARTICIPATED IN	BUSINESS DEVELOPMENT DIRECTOR	Alberto Farias	Phone	(512) 484-3717
PARTICIPATED IN	PLANT MANAGER	Victor Fernandez	Phone	(956) 547-1970
REGULATED ENTITY CONTACT	PLANT MANAGER	Victor Fernandez	Phone	(956) 547-1970
NOE CONTACT	PLANT MANAGER	Victor Fernandez	Phone	(956) 547-1970
NOE CONTACT	COMPLIANCE MANAGER	Rogelio Valdez	Phone	(956) 547-1970
PARTICIPATED IN	COMPLIANCE MANAGER	Rogelio Valdez	Phone	(956) 547-1970
REGULATED ENTITY CONTACT	COMPLIANCE MANAGER	Rogelio Valdez	Phone	(956) 547-1970

Other Staff Member(s):

Role	Name
Investigator	MICHAEL FLORES
Investigator	JOSE MARTINEZ
Investigator	JONATHAN DIAZ
Investigator	ALEJANDRO GARCIA
Investigator	MATTHEW BRISENO
QA Reviewer	MICHAEL FLORES
Supervisor	MONICA GALVAN
Investigator	VICTORIA TRUMMEL
QA Reviewer	MONICA GALVAN

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
AIR EQUIPMENT	Investigation
AIR COMPLAINT INVESTIGATION	Investigation

Investigation Comments:

INTRODUCTION

BROWNSVILLE FACILITY - BROWNSVILLE

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On September 1, 2023, through September 25, 2023, the Texas Commission on Environmental Quality (TCEQ) Harlingen Regional Office received eleven complaints alleging that a regulated entity was causing a nuisance due to high dust emissions, exceeding permitted material stockpile limits, and storing materials on an unauthorized property not specified in their permit application. The Regulated Entity in question is Brownsville Facility (referred to as regulated entity, entity, facility, or site) located at 5487 S Padre Isld Hwy Brownsville, (Cameron County), Texas.

On September 12, 2023, through November 28, 2023, TCEQ Environmental Investigator Victoria Cantu conducted an Air Complaint Investigation to determine compliance with applicable air quality regulations. Additionally, participating in this investigation were TCEQ Investigators Michael Flores, Matthew Briseno, Jose Martinez, Alejandro Garcia, and Jonathan Diaz; TCEQ Harlingen and Laredo Offices Regional Director Jaime Garza; TCEQ Border and Permian Basin Area Director David Ramirez; and Milwhite, Inc. representatives Alberto Farias (Business Development Director), Rogelio Valdez (Safety Coordinator), and Victor Fernandez (Plant Manager). Prior notification was not made as none is required for a complaint investigation.

Daily Narrative

On September 12, 2023, at approximately 11:00 am, Victoria Cantu, Michael Flores, and Matthew Briseno arrived at the residence of one of the complainants. The complainant expressed concern about excessive material being stored on the regulated entity's property. They also highlighted the use of an additional property (referred to as "unauthorized property") to stockpile materials.

Note that Attachment A includes maps illustrating the differentiation between the permitted property and the unauthorized property, as well as a map highlighting the documented stockpile areas. It also includes the most recent plot diagram submitted in the regulated entity's permit application for Air New Source Review (NSR) Permit number 7537 dated March 11, 2013.

For a comprehensive understanding of the approved changes and additions refer to the complete permit amendment application packet for NSR Permit number 7537 dated March 11, 2013, in Attachment E. Photos can be seen in Attachment B. Environmental Weather conditions can be seen in Attachment C.

The investigators then arrived at the regulated entity and met with Alberto Farias (Farias) and Rogelio Valdez (Valdez). Both Farias and Valdez confirmed that an adjacent property had been purchased and was currently being utilized for stockpiling barite. Note that the entity is currently authorized to handle and store barite as represented in the approved permit amendment application (Attachment E - Permit Application for NSR Permit No. 7537). Investigator Cantu requested records detailing the quantity of material stockpiled and processed from January 2022 to the present.

The investigators proceeded to inspect the stockpiles to measure the stored materials. It was confirmed that the regulated entity was stockpiling barite on an unauthorized property which had not been specified in the application for the permit. See Attachment E - approved permit amendment application.

Measurements documented that the stockpiled materials (located on both the permitted and unauthorized properties) covered an area of approximately 146,740 square feet. Measurements were taken using a Bushnell Rangefinder and a 12-foot measuring tool.

Using Google Earth Pro mapping software, the approximate area of the stockpiles was plotted and calculated. The approximate area was determined based on visual observations of the stockpiles' shape and location, as well as the distance measurements taken with the Bushnell Rangefinder. (Attachment A).

Approximate stockpile areas were measured as the following:

Stockpile 1: 41,230 square feet
Stockpile 2: 70,622 square feet

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Stockpile 3: 30,471 square feet
Stockpile 4: 4,417 square feet

The stockpiled material's total area was approximately 146,740 square feet. This area is more than twice the permitted area limit of 69,000 square feet. The entity was also storing material in three additional stockpiles throughout the authorized and unauthorized portions of their operation. Cameron County Appraisal District Property information for the unauthorized property can be seen in Attachment G.

Additionally, stockpile heights were approximated to be the following:

Stockpile 1: 10 ft
Stockpile 2: 13 ft
Stockpile 3: 11 ft
Stockpile 4: 10 ft

At the time of this measurement, the stockpile height met the requirements of Special Condition 24.

The regulated entity's NSR Permit number 7537, specifically Special Condition 24, stipulates a limit of 70,000 tons and a coverage area not exceeding 69,000 square feet for stockpiled materials. It was documented that the regulated entity exceeded the permitted stockpile area limit, encompassing an area of approximately 146,740 square feet. This area is more than twice the permitted area limit of 69,000 square feet. The stockpiles were located on both the authorized and unauthorized properties.

On September 14, 2023, at approximately 9:00 p.m., investigator Flores conducted a survey of the complainant's residences to assess the presence of dust nuisance conditions. The survey revealed no evidence of excessive dust accumulation on the complainant's properties and no visible emissions were documented originating from the regulated entity's property. Although no nuisance conditions or visible emissions were documented by Investigator Flores during this survey, it is noted that several complainants reported a substantial surge of dust, lasting approximately fifteen minutes, occurring shortly after Investigator Flores departed the area. Complainants have consistently characterized the dust emissions as unpredictable and occurring at intermittent intervals.

On September 25, 2023, at approximately 10:00 a.m., Investigators Victoria Cantu, Jose Martinez, and Michael Flores conducted a survey of the complainant's residences to assess the presence of dust nuisance conditions. The survey did not document excessive dust accumulation on the complainant's properties and no visible emissions were documented originating from the regulated entity's property. While no nuisance conditions or visible emissions were documented during this survey, it is noted that several complainants had reported that emissions were more pronounced at night, occurring in intermittent bursts rather than a continuous release.

On October 30, 2023, the entity provided the material processing amounts for January 2023 to September 2023.

On November 7, 2023, and November 9, 2023, a complainant contacted the TCEQ Harlingen Regional Office stating that nuisance conditions were continuing to occur particularly on November 7th. They also expressed concerns about the stockpile volume and state of the equipment.

On November 15, 2023, TCEQ Harlingen Regional Director Jaime Garza and TCEQ Border and Permian Basin Area Director David Ramirez met with Rogelio Valdez and Victor Fernandez to discuss the complaint conditions and provide the Exit Interview Form. That same day, Investigators Victoria Cantu, Michael Flores, and Jose Martinez conducted an Air Reconnaissance survey of the Regulated Entity's property to capture photographic evidence of the stockpiles exceeding the permitted area (Attachment B)

On November 16, 2023, Investigators Victoria Cantu and Jose Martinez conducted a site visit to address potential violations identified in the Exit Interview Form with Victor Fernandez, who had resumed his role as the plant manager. During the discussion, Mr. Fernandez stated that Alberto Farias was no longer employed by the company, and he (Victor Fernandez) would be undertaking Farias's responsibilities.

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As indicated in the TCEQ Exit Interview Form, the investigators communicated to Mr. Fernandez the specific documentation required to address the identified concerns. These included current measurements of the square footage and height of stockpiles, photographic evidence of the stockpiles, and documentation (receipts or invoices) for incoming shipments of raw materials and outgoing shipments of processed materials spanning from January 2022 to the present.

The investigators discussed the following potential violations with Victor Fernandez. For additional details documenting the violations, refer to the ADDITIONAL INFORMATION section of this report.

1. Failure to Comply with Special Condition 24 of Permit Number 7537: This condition states that stockpiled material shall not exceed 70,000 tons and shall not cover an area greater than 69,000 square feet.
2. Failure to Comply with Special Condition 28(b) of Permit Number 7537: This involves the submission of records to demonstrate compliance, including daily, monthly, and annual material processing amounts summarized in tons per hour, tons per month, and tons per year from January 2022 to the current date.
3. Operating Outside the Conditions of the Permit Application: This pertains to the utilization of a neighboring unauthorized property for stockpiling materials not originally specified in the permit application. A strong advisory was given against continuing operations on this additional property, as it lacks authorization.
4. Operating Without a Proper Permit Amendment or Major Modification: This violation includes the failure to submit a permit amendment before purchasing or leasing a neighboring property. Additionally, utilizing the adjacent property to expand the stockpile area without proper authorization is noted.

Mr. Fernandez was explicitly notified that portions of the operation were occurring without the potential necessary authorization. The material being stockpiled on the unauthorized property was not included in the permit application and the stockpile area exceeded the authorized area limit of 69,000 square feet. Mr. Fernandez committed to rectifying the situation by relocating the stockpiled material off of the unauthorized property by November 29, 2023. In addition, Mr. Fernandez stated that they were not in operation from January 2022 through January 2023, therefore no daily, monthly, or annual material processing amounts were documented.

On November 28, 2023, Investigators Victoria Cantu, Alejandro Garcia, and Jonathan Diaz arrived at the entity to follow up with Victor Fernandez regarding his commitment to relocating the material off of the unauthorized property. During the meeting, Mr. Fernandez stated that he had initiated the process of relocating the stockpiles. However, he conveyed that the timeline for completing the material relocation was uncertain and might take an indeterminate amount of time.

Exit Interview

On November 15, 2023, the Exit Interview Form was provided to Rogelio Valdez and Victor Fernandez in person by TCEQ Harlingen Regional Director Jaime Garza and TCEQ Border and Permian Basin Area Director David Ramirez. See the Exit Interview Form in Attachment D.

GENERAL FACILITY AND PROCESS INFORMATION

Process Description

Receiving Operation:

TCEQ Air New Source Review (NSR) Permit No. 7537 currently authorizes Milwhite to receive up to 250,000 tons per year (tpy) by truck or by rail. This process involves unloading ships at the local port into

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trucks and transporting the material to the site. Material received by rail is unloaded either by a front-end loader from box cars or by bottom dump railcar into a pit below the car. Once at the site, the material is stacked in one of two stockpiles where it is stored until it is processed by the grinding facility. Materials currently authorized under Permit No. 7537 include limestone, clays (including fireclay, fuller's earth, ball clay, and common clay), rock salt, talc, barite, zeolite, and celestite. See Attachment E - entity authorization.

Material Storage:

Milwhite is currently authorized to store up to 70,000 tons of material at two locations (EPNs 2 and 3) at an average height that shall not exceed 45 feet and comprising a total area of 69,000 square feet.

Material Processing:

Raw material is transported from the storage piles to the jaw crusher, which operates on an on-demand basis, by front end loader. The crushing facility is operated inside a partially enclosed building. The first step in the material processing operation is a jaw crusher with a maximum capacity of 40 tons per hour (tph) and 225,000 tpy. Crushed material is then transported to the Processing Building.

The final size reduction is conducted using the Raymond Milling process within the processing building. This process consists of an enclosed system under negative pressure. The material is ground to a size that allows it to be entrained in a continuous stream of air. The air flows through a cyclone to separate the ground material from the air stream. Air from the cyclone is recirculated back to each mill with a small volume being removed to two baghouses (EPNs 12 and 22) to maintain negative pressure in the system. The material is transferred through several enclosed transfer points either to bagging hoppers in the building or to five bulk storage tanks located outside the building (EPNs 31, 32, 33, 34, and 35). Each of the two Raymond Mills are currently permitted for a maximum combined processing rate of 25 tph. The maximum hourly capacity of each of the Raymond mills is 13 tph and 94,640 tpy.

Additionally, Milwhite has the ability to receive nonmetallic minerals that have undergone primary crushing at another facility. In this configuration, crushed material will be conveyed directly to the grinder hopper that feeds the Raymond mills, thereby bypassing the jaw crusher.

Material Packaging and Loadout:

The final product is delivered to consumers in multiple packaging formats. Bags are filled within the processing building and stored on pallets until product is shipped to the final consumer. Emissions from the bagging operations for Mills 1 and 2 are controlled by a baghouse (EPN 37). Ground material is also loaded from the outdoor storage tanks into bulk trucks (EPN TRK-LO). A hood and suction system captures emissions from this form of loadout. The final method used for delivering material is bulk rail cars. The rail cars are filled with a pneumatic system from the storage tanks. The cars are sealed and only vented through a baghouse filter placed on the vent of the rail car (EPN RC-LOAD). It takes approximately 3 hours to load a single rail car/ with a capacity of 100 tons. In addition, Milwhite is permitted to load out on trucks up to 12,000 tpy of unprocessed bulk ore (EPN ORE-LO).

BACKGROUND

Brownsville Facility is identified in the TCEQ Central Registry as Regulated Entity Number RN102540960 and is owned and operated by Milwhite Inc identified as Customer Number CN600505960. The regulated entity has a compliance history rating of "2.50" and a performance classification of "Satisfactory". The customer has a compliance history rating of "2.50" and a performance classification of "Satisfactory".

On July 13, 2023, through July 27, 2023, the TCEQ conducted an Onsite Follow-up Investigation and Complaint Investigation. During the investigation, sixteen alleged violations were documented five of which

BROWNSVILLE FACILITY - BROWNSVILLE

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were repeat violations. A Notice of Enforcement was issued. Consolidated Compliance and Enforcement Data System (CCEDS) Investigation Number: 1917795; Violation Tracking Numbers: 840106, 840119, 840325, 854974, 854978, 854979, 854983, 854986, 854991, 854993, 854999, 855004, 855005, 855006, 855008, and 855014; Incident Numbers: 408515, 408529, 408524, 408521, 409230, 408499, 408531, 408526, 408525, 408511, 408518, 408533, 408523, 408497, 408528, and 408508.

On February 7, 2023, through March 8, 2023, the TCEQ conducted a Complaint Investigation. During the investigation, five alleged violations were documented. A Notice of Violation was issued. CCEDS Investigation Number: 1880582; Violation Tracking Numbers: 840106, 840118, 840119, 840120, and 840325; Incident Numbers: 396038, 397183, 396162, 396164, 396036, 396042, 396631, and 397169.

On September 30, 2022, the TCEQ conducted a File Review Follow-Up Investigation. During the investigation, one violation was documented. A Notice of Enforcement was issued. CCEDS Investigation Number: 1847377; Violation Tracking Number: 810963.

On March 31, 2022, through April 14, 2022, the TCEQ conducted a Non-Major Non-Checklisted (NMNC) Investigation. During the investigation, one violation was documented. A Notice of Violation was issued. CCEDS Investigation Number: 1813166; Violation Tracking Number: 810963.

On November 13, 2023, a Secretary of State (SOS) Business Inquiry revealed that Milwhite, Inc. is currently in existence, with its official mailing address listed as 5487 Padre Island Highway, TX 78521. The current management details, as of October 11, 2021, indicate that Mr. Armando De Leon III serves as the President and Director. Additionally, Mr. Armando De Leon IV was identified as both the Secretary and Director (Attachment F). Cameron County Appraisal District Property information for the unauthorized property can be seen in Attachment G.

Agreed Orders, Court Orders, and Other Compliance Agreements

A proposed Administrative Order has been created for TCEQ Docket Number 2022-1588-AIR-E - Enforcement Case Number 63358. The current status is indicated as "proposed" as of October 27, 2023.

Prior Enforcement Issues

TCEQ Docket Number 2022-1588-AIR-E - Enforcement Case Number 63358 was assigned on November 14, 2022. The current status is indicated as "active" as of October 27, 2023.

Complaints

Including this investigation, there have been 35 complaints received in the past two years related to air quality.

On September 12, 2023, through September 26, 2023, TCEQ conducted an Air Complaint Investigation. CCEDS Investigation Number: 1932351; Incident Numbers: 410856, 410859, 410860, 410861, 410862, 410864, 410865, 410866, 410867, 410868, and 410869.

On July 13, 2023, through July 27, 2023, the TCEQ conducted an Onsite Follow-up Investigation and Complaint Investigation. CCEDS Investigation Number: 1917795; Incident Numbers: 408515, 408529, 408524, 408521, 409230, 408499, 408531, 408526, 408525, 408511, 408518, 408533, 408523, 408497, 408528, and 408508.

On February 7, 2023, through March 8, 2023, the TCEQ conducted a Complaint Investigation. CCEDS Investigation Number: 1880582; Incident Numbers: 396038, 397183, 396162, 396164, 396036, 396042, 396631, and 397169. A Notice of Violation was issued.

ADDITIONAL INFORMATION

Conclusions, Recommendations, and Current Enforcement Actions

Based on the investigation findings the regulated entity is alleged to be in violation of the following:

Violation Track Number (VTN): 863894.

Failure to comply with the special conditions contained in the permit document.

The regulated entity is non-compliant with Title 30 of the Texas Administrative Code (30 TAC) §116.115(c) which states, "The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document."

Additionally, the regulated entity is non-compliant with 30 TAC §116.116(a) and (b). 30 TAC §116.116(a) states that the permit application is issued based on the representations and conditions in the permit application. 30 TAC §116.116(b) states that the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if a change will cause a change in the method of control of emissions, a change in the character of the emissions, or cause an increase in the emission rate of any air contaminant.

Specifically, the entity failed to meet Special Condition 24 for NSR Permit Number 7537 which states that, "Stockpiled material shall not exceed 70,000 tons and shall not cover an area greater than 69,000 square feet." Additionally, the entity failed to operate based on the representations in the permit application for Permit number 7537.

On September 12, 2023, it was documented that the regulated entity was surpassing the permitted stockpile area limit of 69,000 square feet, as stated in Special Condition 24. The entity was documented stockpiling an excess amount of material on their permitted property and was also stockpiling material on an adjacent unauthorized property. The entity was also documented stockpiling material in piles that were not included in the plot plan of their approved permit application.

Approximate stockpile areas were measured as the following:

Stockpile 1: 41,230 square feet
Stockpile 2: 70,622 square feet
Stockpile 3: 30,471 square feet
Stockpile 4: 4,417 square feet

The stockpile area was measured to be approximately 146,740 square feet. This area is more than twice the permitted area limit of 69,000 square feet, as stated in Special Condition 24.

The entity was storing material in additional stockpiles throughout the authorized and unauthorized portions of their operation. The entity failed to operate based on the representations in the permit application for Permit number 7537.

Additionally, the entity failed to obtain a permit amendment before making changes that could cause a change in the method of control of emissions, a change in the character of the emissions or cause an increase in the emission rate of any air contaminant. The entity did not submit a permit amendment prior to using an adjacent property to stockpile material, stockpile material outside of their designated stockpile areas, and prior to increasing the stockpile area. These changes will increase the rate of emitting air contaminants and will lead to higher air emissions than what was authorized in their permit application. The increase in stockpile area and change in stockpile location is considered a significant deviation from the permit special

conditions and the representations in the permit application.

Furthermore, the regulated entity is non-compliant with Title 5 Subtitle C of the Texas Health and Safety Code (5C THSC) §382.085(b) which states, "A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order."

Ultimately, CCEDS VTN: 863894 falls into violation category A12.i(6) as per the TCEQ Enforcement Initiation Criteria (EIC), Revision No. 17, Effective September 1, 2020, and will be formally referred to the TCEQ Enforcement Division. Specifically, TCEQ EIC category A12.i(6) refers to a significant deviation from permit and/or permit application representations. This violation warrants an Enforcement Action Referral (EAR).

A Notice of Enforcement Letter will be sent to the regulated entity for the aforementioned alleged violations via United States Postal Service (USPS) Certified mail, USPS first class mail, and via email.

Additional Issues

Although nuisance conditions were not documented during this investigation, nuisance conditions were observed during the previous investigation # 1917795 conducted on July 13, 2023, through July 27, 2023, and investigation # 1880582 conducted on February 14, 2023, through February 28, 2023.

The Region acknowledges that the increase in stockpiled material raises the potential for heightened nuisance conditions. The regulated entity bears the responsibility of preventing and addressing any potential nuisance conditions in the surrounding area due to impacts from the regulated entity.

It is emphasized that the regulated entity shall comply with 30 TAC 101.4, which states that, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property."

In addition, it is emphasized that as per Special Condition 6 of Permit number 7537, "There shall be no visible fugitive emissions leaving the property."

NOE Date: 2/29/2024

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

Track Number: 863894

Compliance Due Date: To Be Determined

Violation Start Date: 9/12/2023

**30 TAC Chapter 116.115(c)
30 TAC Chapter 116.116(a)
30 TAC Chapter 116.116(b)
5C THSC Chapter 382.085(b)**

Alleged Violation:

Investigation: 1932351

Comment Date: 02/23/2024

Failure to comply with the special conditions contained in the permit document.

The regulated entity is non-compliant with Title 30 of the Texas Administrative Code (30 TAC) §116.115(c) which states, "The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document."

Additionally, the regulated entity is non-compliant with 30 TAC §116.116(a) and (b). 30 TAC §116.116(a) states that the permit application is issued based on the representations and conditions in the permit application. 30 TAC §116.116(b) states that the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if a change will cause a change in the method of control of emissions, a change in the character of the emissions, or cause an increase in the emission rate of any air contaminant.

Specifically, the entity failed to meet Special Condition 24 for NSR Permit Number 7537 which states that, "Stockpiled material shall not exceed 70,000 tons and shall not cover an area greater than 69,000 square feet." Additionally, the entity failed to operate based on the representations in the permit application for Permit number 7537.

On September 12, 2023, it was documented that the regulated entity was surpassing the permitted stockpile area limit of 69,000 square feet, as stated in Special Condition 24. The entity was documented stockpiling an excess amount of material on their permitted property and was also stockpiling material on an adjacent unauthorized property. The entity was also documented stockpiling material in piles that were not included in the plot plan of their approved permit application.

Approximate stockpile areas were measured as the following:

Stockpile 1: 41,230 square feet
Stockpile 2: 70,622 square feet
Stockpile 3: 30,471 square feet
Stockpile 4: 4,417 square feet

The stockpile area was measured to be approximately 146,740 square feet. This area is more than twice the permitted area limit of 69,000 square feet, as stated in Special Condition 24.

The entity was storing material in additional stockpiles throughout the authorized and unauthorized portions of their operation. The entity failed to operate based on the representations in the permit application for Permit number 7537.

Additionally, the entity failed to obtain a permit amendment before making changes that could cause a change in the method of control of emissions, a change in the character of the emissions or cause an increase in the emission rate of any air contaminant. The entity did not submit a permit amendment prior to using an adjacent property to stockpile material, stockpile material outside of their designated stockpile areas, and prior to increasing the stockpile area. These changes will increase the rate of emitting air contaminants and will lead to higher air emissions than what was authorized in their permit application. The increase in stockpile area and change in stockpile location is considered a significant deviation from the permit special conditions and the representations in the permit application.

Furthermore, the regulated entity is non-compliant with Title 5 Subtitle C of the Texas Health and Safety Code (5C THSC) §382.085(b) which states, "A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order."

Recommended Corrective Action: Stockpiled material shall be maintained in designated areas as outlined in the plot plan provided in the approved permit application for NSR permit number 7537. The total area of the authorized stockpiles shall not exceed 69,000 square feet. The entity shall operate within the parameters of the approved Special Conditions, representations, and conditions. A permit amendment shall be submitted to the TCEQ Air Permits division if the entity is operating outside the parameters of the approved Special Conditions, representation, and conditions.

Additional Issues

Description Item 2

Additional Comments

Although nuisance conditions were not documented during this investigation, nuisance conditions were observed during the previous investigation # 1917795 conducted on July 13, 2023, through July 27, 2023, and investigation # 1880582 conducted on February 14, 2023, through February 28, 2023.

The Region acknowledges that the increase in stockpiled material raises the potential for heightened nuisance conditions. The regulated entity bears the responsibility of preventing and addressing any potential nuisance conditions in the surrounding area due to impacts from the regulated entity.

It is emphasized that the regulated entity shall comply with 30 TAC 101.4, which states that, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property."

Description Item 3

Additional Comments

It is emphasized that as per Special Condition 6 of Permit number 7537, "There shall be no visible fugitive emissions leaving the property."

Signed Victoria Cantu **Date** 02/29/2024

Environmental Investigator

Signed Monica Felton **Date** 2/29/2024

Supervisor

Attachments: (in order of final report submittal)

- | | |
|--|---|
| <input checked="" type="checkbox"/> Enforcement Action Request (EAR) | <input checked="" type="checkbox"/> Maps, Plans, Sketches |
| <input checked="" type="checkbox"/> Letter to Facility (specify type) : <u>NOE</u> | <input checked="" type="checkbox"/> Photographs |
| Investigation Report | <input type="checkbox"/> Correspondence from the facility |
| <input type="checkbox"/> Sample Analysis Results | <input checked="" type="checkbox"/> Other (specify) : |
| <input type="checkbox"/> Manifests | <u>Attachments A - G</u> |
| <input type="checkbox"/> Notice of Registration | _____ |

EXHIBIT D
TCEQ Investigation #1966283
(February 2024) &
Investigator Affidavit

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: Milwhite, Inc.
Customer Number: CN600505960

Regulated Entity Name: BROWNSVILLE FACILITY

Regulated Entity Number: RN102540960

Investigation # 1966283

Incident Numbers

417821

Investigator: VICTORIA CANTU

Site Classification CASE-BY-CASE

Conducted: 02/05/2024 -- 02/28/2024

NAIC Code: 212312

SIC Code: 1422

SIC Code: 3295

Program(s): AIR NEW SOURCE PERMITS

Investigation Type: Compliance Investigation

Location: 77 S EXIT BOCA CHICA, RIGHT ON
INTERNATIONAL BLVD, TURN RIGHT

Additional ID(s) CD0051C

7537

4806100007

Address: 5487 S PADRE ISLD HWY,
BROWNSVILLE, TX , 78521

Local Unit: REGION 15 - HARLINGEN

Activity Type(s) NMNC - AIR NMNC - NON-MAJOR
NON-CHECKLISTED
AIRCOMPL - AIR CMPL - AIR
COMPLAINT INV
AIR RECON - AIR RECON -
RECONNAISSANCE
INVESTIGATION

Principal(s):

Role

Name

RESPONDENT

MILWHITE INC

Contact(s):

BROWNSVILLE FACILITY - BROWNSVILLE**2/12/2024 to 2/28/2024 Inv. # - 1966283****Page 2 of 9**

Role	Title	Name	Phone
NOE CONTACT	PLANT MANAGER	Victor Fernandez	Phone (956) 547-1970
PARTICIPATED IN	PLANT MANAGER	Victor Fernandez	Phone (956) 547-1970
REGULATED ENTITY CONTACT	PLANT MANAGER	Victor Fernandez	Phone (956) 547-1970
NOE CONTACT	COMPLIANCE MANAGER	Rogelio Valdez	Phone (956) 547-1970
REGULATED ENTITY CONTACT	COMPLIANCE MANAGER	Rogelio Valdez	Phone (956) 547-1970
NOE CONTACT	PRESIDENT	Armando De Leon III	Phone (956) 547-1970
REGULATED ENTITY MAIL CONTACT	PRESIDENT	Armando De Leon III	Phone (956) 547-1970

Other Staff Member(s):

Role	Name
Investigator	MICHAEL FLORES
QA Reviewer	MONICA GALVAN
Investigator	MONICA GALVAN
Supervisor	MONICA GALVAN
QA Reviewer	JOSE MARTINEZ
Investigator	JOSE MARTINEZ

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
AIR EQUIPMENT	1966283
AIR COMPLAINT INVESTIGATION	1966283
AIR GENERIC INVESTIGATION (10 ITEMS)	1966283

Investigation Comments:**INTRODUCTION**

On January 19, 2024, through March 20, 2024, the Texas Commission on Environmental Quality (TCEQ) Harlingen Regional Office received ten complaints alleging that a regulated entity was causing a nuisance due to excessive particulate matter (PM) dust emissions. The Regulated Entity (RE) in question is the Milwhite, Inc. Brownsville Facility located at 5487 S Padre Island Highway Brownsville, (Cameron County), Texas.

From February 5, 2024, through February 28, 2024, TCEQ Environmental Investigator Victoria Cantu conducted an Air Complaint Investigation and a Non-Major Non-Checklisted (NMNC) Investigation to determine compliance with applicable air quality regulations.

Additionally, participating in this investigation were TCEQ Investigators Michael Flores and Jose Martinez, TCEQ Harlingen Regional Manager Monica Galvan; and Milwhite, Inc. Plant Manager Victor Fernandez. Prior notification was not made as none is required for a complaint investigation.

Daily Narrative

On February 5, 2024, at approximately 2:30 pm, Victoria Cantu surveyed the complainants' neighborhood to assess the presence of particulate matter (PM) emissions. During the survey, no PM emissions were observed leaving the regulated entity's (RE) property. However, several complainants had previously stated that the facility primarily operates at night.

On February 8, 2024, at approximately 8:00 pm, Monica Galvan (Galvan) and Michael Flores (Flores) surveyed the complainants' neighborhood to assess the presence of PM emissions. During the survey, Galvan and Flores documented visible PM emissions leaving the RE's property and entering the complainants' neighborhood. Monica Galvan reported feeling discomfort, including a dry throat, coughing, and a raspy voice, which persisted for approximately five minutes. The symptoms subsided after leaving the area impacted by the PM emissions. Additionally, the neighborhood appeared to be enveloped in a plume of PM emissions. See photos 1 - 10 in Attachment A, Consolidated Compliance and Enforcement Data System (CCEDS) Electronic Attachments Videos 1 and 2, and Summary of Events in Attachment B.

During the survey, complainants reported that PM emissions and noise from the RE disrupted the neighborhood's outdoor enjoyment. One complainant specifically mentioned being unable to use their pool due to the PM emissions, while another reported that the PM was coating their vehicles.

On February 12, 2024, at approximately 10:20 am, Victoria Cantu surveyed the complainants' neighborhood to assess the presence of PM emissions. The investigator observed a light brown beige PM coating the complainants' properties, including exterior windowsills, exterior home walls, patio furniture, air conditioning units, and the plants and grass. See photos 11 - 16 in Attachment A. While walking through the grass in their yards, the investigator noticed PM particles being disturbed with each step. The particles resembled tiny dust clouds rising from the grass as she walked. After leaving, the dust had coated her boots.

That same day at approximately 11:20 am, Victoria Cantu conducted a site assessment at the RE's property. During the assessment, PM emissions were observed coming from Warehouse 1 which houses the jaw crusher. See CCEDS Electronic Attachment Video 3. The processing building, which contains the mills, had several piles of spilled material all around the mills. See photos 17 - 28 in Attachment A and Plant Manager, Victor Fernandez stated that they were in the process of cleaning the spilled material and that they would have it cleaned by the next day. It did not appear that they were in the process of cleaning at the time, no one was present in the building at that time.

The next day, on February 13, 2024, at approximately 1:20 pm, Victoria Cantu and Jose Martinez arrived at the RE's property to follow up on the progress of cleaning the spilled material in the processing building. During the assessment, large plumes of PM emissions were observed exiting the processing building. See photos 29 - 44 in Attachment A and CCEDS Electronic Attachment Video 4.

While walking towards the processing building, piles of spilled material were observed underneath the silos with some piles ranging from one to two feet tall. Due to the large quantity of spilled material beneath the silos, investigator Cantu asked Mr. Fernandez if the silos were equipped with a visible and/or audible warning device to warn operators when the silos are full to prevent overloading. Mr. Fernandez stated that no such warning device was installed on the silos. In addition, he stated that the silos would overload when workers were not paying attention, particularly during late-night shifts. Investigator Cantu informed Mr. Fernandez that a visible or audible warning device was one of their permit requirements.

The investigators then proceeded into the processing building. Within the processing building, barrel fans were placed around the mills blowing the spilled material out of the side of the building. All the doors of the building were open at this time. None of the mills were operating. One fan was placed directly on one of the mills and appeared to be blowing material out of the mill. The fans were causing the spilled material and material in the mills to exit the building creating large plumes of PM emissions. Mr. Fernandez stated that the fans were used to cool the workers. Investigator Cantu explained to Mr. Fernandez that the use of fans in the processing building and around the mills was leading to excessive PM emissions exiting the building.

On February 20, 2024, at approximately 2:17 pm, Victoria Cantu and Michael Flores conducted a site assessment at the RE's property. The investigators proceeded into the processing building. Piles of spilled material were observed on the floor around the mills, the baghouses, and beneath the duct system that was transferring material from the processing building into the silos. PM was observed escaping through holes in the ducts. See photos 45 - 72 in Attachment A and CCEDS Electronic Attachments Videos 5 and 6.

The investigators then proceeded to the silos. At the time, material was being transferred between the silos. Large piles of spilled material were observed beneath the silos. Some piles were approximately two feet tall. Several holes were observed in the ducts transferring material between silos, allowing PM to escape. A worker appeared to be pushing material through a hole in a duct with a rod. Investigator Cantu asked the worker about his task. The worker explained that he had to manually push material through the ducts when it got stuck during the transfer between silos. This demonstrated that the ducts transferring material between the silos appeared to be malfunctioning.

On February 22, 2023, at approximately 8:00 pm, Michael Flores and Jose Martinez surveyed the complainants' neighborhood to assess the presence of PM emissions. During the survey, no visible emissions were observed coming from the regulated entity's property. During the assessment, complainants approached the investigators and expressed their concerns about the PM emissions stating that the PM was damaging their property. See photos 73 and 74 in Attachment A.

On February 27, 2024, at approximately 5:20 am, Monica Galvan and Jose Martinez surveyed the complainants' neighborhood to assess the presence of PM emissions. During the survey, they observed PM in the air, which was emanating from the RE's property and impacting the complainant's properties. See photos 75 - 80 and CCEDS Electronic Attachments Videos 7 and 8. Monica Galvan stepped into a plume of PM and felt a sensation of fine particles in the back of her throat. Jose Martinez reported tasting dirt in the air. Visible emissions were impacting the neighborhood. Monica Galvan also reported feeling PM in her eyes near a lamp post along Rey Jaime Street, at the road's curve. It appeared that the RE was transferring materials at the time, and a conveyor was identified as the source of the emissions. Additionally, during the assessment, multiple school buses were observed picking up children within the neighborhood.

On February 28, 2024, at approximately 9:50 am, Michael Flores surveyed the complainants' neighborhood to assess the presence of PM emissions. During the survey, visible emissions were observed emanating from the regulated entity's property toward the neighborhood. A visible haze of PM emissions in the air was present near the railroad tracks between the regulated entity and the neighborhood. See photos 81 and 82 in Attachment A and CCEDS Electronic Attachment Video 9.

On May 6, 2024, at approximately 2:50 pm, Victoria Cantu conducted a site assessment at the RE's property to address ongoing violations documented in Investigation No. 1932351 and Investigation No. 1917795. These previous investigations have documented several violations, including breaches of multiple special conditions outlined in Air New Source Review (NSR) Permit No. 7537, instances of nuisance violations, and the unauthorized use of a neighboring property for material stockpiling. For more information please refer to the Additional Issues section of this report. In addition, the RE provided documentation demonstrating that Milwhite, Inc. obtained a commercial lease to use the neighboring property on which they are stockpiling material. The commercial lease agreement can be seen in Attachment C.

Throughout the investigation, complainants consistently expressed their concerns with statements regarding Milwhite, Inc.'s apparent disregard for environmental standards and the welfare of the surrounding community. They described enduring persistent air pollution which compromised their ability to breathe clean air and maintain a healthy lifestyle. Moreover, they reported that the dust emanating from the facility was not only damaging their property but also infiltrating their residences, leading to respiratory irritation. Ultimately, they conveyed a sense of urgency, emphasizing that they could no longer tolerate living under these conditions.

Environmental Weather conditions during each of the surveys and site assessments can be viewed in Attachment D. A map of the surveyed area in comparison to the regulated entity's property can be seen in Attachment E. Air New Source Review (NSR) Permit No. 7537 can be seen in Attachment F.

Exit Interview

On April 5, 2024, the Exit Interview Form was provided to Victor Fernandez via email. See the Exit Interview Form in Attachment G.

GENERAL FACILITY AND PROCESS INFORMATION

Process Description

Receiving Operation:

TCEQ Air New Source Review (NSR) Permit No. 7537 currently authorizes Milwhite to receive up to 250,000 tons per year (tpy) by truck or by rail. This process involves unloading ships at the local port into trucks and transporting the material to the site. Material received by rail is unloaded either by a front-end loader from box cars or by bottom dump railcar into a pit below the car. Once at the site, the material is stacked in one of two stockpiles where it is stored until it is processed by the grinding facility. Materials currently authorized under Permit No. 7537 include limestone, clays (including fireclay, fuller's earth, ball clay, and common clay), rock salt, talc, barite, zeolite, and celestite.

Material Storage:

Milwhite is currently authorized to store up to 70,000 tons of material at two locations (EPNs 2 and 3) at an average height that shall not exceed 45 feet and comprising a total area of 69,000 square feet.

Material Processing:

Raw material is transported from the storage piles to the jaw crusher, which operates on an on-demand basis, by front end loader. The crushing facility is operated inside a partially enclosed building. The first step in the material processing operation is a jaw crusher with a maximum capacity of 40 tons per hour (tph) and 225,000 tpy. Crushed material is then transported to the Processing Building.

The final size reduction is conducted using the Raymond Milling process within the processing building. This process consists of an enclosed system under negative pressure. The material is ground to a size that allows it to be entrained in a continuous stream of air. The air flows through a cyclone to separate the ground material from the air stream. Air from the cyclone is recirculated back to each mill with a small volume being removed to two baghouses (EPNs 12 and 22) to maintain negative pressure in the system. The material is transferred through several enclosed transfer points either to bagging hoppers in the building or to five bulk storage tanks located outside the building (EPNs 31, 32, 33, 34, and 35). Each of the two Raymond Mills are currently permitted for a maximum combined processing rate of 25 tph. The maximum hourly capacity of each of the Raymond mills is 13 tph and 94,640 tpy.

Additionally, Milwhite has the ability to receive nonmetallic minerals that have undergone primary crushing at another facility. In this configuration, crushed material will be conveyed directly to the grinder hopper that feeds the Raymond mills, thereby bypassing the jaw crusher.

Material Packaging and Loadout:

The final product is delivered to consumers in multiple packaging formats. Bags are filled within the processing building and stored on pallets until product is shipped to the final consumer. Emissions from the bagging operations for Mills 1 and 2 are controlled by a baghouse (EPN 37). Ground material is also loaded from the outdoor storage tanks into bulk trucks (EPN TRK-LO). A hood and suction system captures emissions from this form of loadout. The final method used for delivering material is bulk rail cars. The rail cars are filled with a pneumatic system from the storage tanks. The cars are sealed and only vented through a baghouse filter placed on the vent of the rail car (EPN RC-LOAD). It takes approximately 3 hours to load a

BROWNSVILLE FACILITY - BROWNSVILLE

2/12/2024 to 2/28/2024 Inv. # - 1966283

Page 6 of 9

single rail car/ with a capacity of 100 tons. In addition, Milwhite is permitted to load out on trucks up to 12,000 tpy of unprocessed bulk ore (EPN ORE-LO).

BACKGROUND

Brownsville Facility is identified in the TCEQ Central Registry as Regulated Entity Number RN102540960 and is owned and operated by Milwhite Inc identified as Customer Number CN600505960. The regulated entity has a compliance history rating of "2.50" and a performance classification of "Satisfactory". The customer has a compliance history rating of "2.50" and a performance classification of "Satisfactory".

On September 12, 2023, through November 28, 2023, the TCEQ conducted an Air Complaint investigation. During the investigation, one alleged category A violation was documented. A Notice of Enforcement was issued. CCEDS Investigation Number: 1932351.

On July 13, 2023, through July 27, 2023, the TCEQ conducted an Onsite Follow-up Investigation and Complaint Investigation. During the investigation, sixteen alleged violations were documented five of which were repeat violations. A Notice of Enforcement was issued. CEEDS Investigation Number: 1917795; Incident Numbers: 408515, 408529, 408524, 408521, 409230, 408499, 408531, 408526, 408525, 408511, 408518, 408533, 408523, 408497, 408528, 408508.

On February 7, 2023, through March 8, 2023, the TCEQ conducted a Complaint Investigation. During the investigation, five alleged violations were documented. A Notice of Violation was issued. CCEDS Investigation Number: 1880582; Violation Tracking Numbers: 840106, 840118, 840119, 840120, and 840325; Incident Numbers: 396038, 397183, 396162, 396164, 396036, 396042, 396631, and 397169.

On September 30, 2022, the TCEQ conducted a File Review Follow-Up Investigation. During the investigation, one violation was documented. A Notice of Enforcement was issued. CCEDS Investigation Number: 1847377; Violation Tracking Number: 810963.

On March 31, 2022, through April 14, 2022, the TCEQ conducted a Non-Major Non-Checklisted (NMNC) Investigation. During the investigation, one violation was documented. A Notice of Violation was issued. CCEDS Investigation Number: 1813166; Violation Tracking Number: 810963.

On April 11, 2024, a Secretary of State (SOS) Business Inquiry revealed that Milwhite, Inc. is currently in existence, with its official mailing address listed as 5487 Padre Island Highway, TX 78521. The latest management details, as of January 25, 2024, indicate that Mr. Armando De Leon III serves as the President and Director. Additionally, Mr. Armando De Leon IV was identified as both the "Sec-trea" and Director. For more information see Attachment H.

Agreed Orders, Court Orders, and Other Compliance Agreements

A Court Order has been created. A TCEQ/Court Docket number has not yet been assigned. The current status is indicated as "Pending" as of March 19, 2024.

Prior Enforcement Issues

An Administrative Order was created for TCEQ Docket number 2022-1588-AIR-E - Enforcement Case Number 63358. The current status is indicated as "Administratively Resolved" as of March 11, 2024, with a referral to the Texas Office of the Attorney General on March 11, 2024.

Complaints

Including this investigation, there have been 45 complaints received in the past two years related to air quality.

On September 12, 2023, through November 28, 2023, the TCEQ conducted an Air Complaint investigation. CCEDS Investigation Number: 1932351; Incident Numbers: 410856, 410865, 410868, 410866, 410861, 410864, 410859, 410869, 410860, 410867, and 410862.

On September 12, 2023, through September 26, 2023, TCEQ conducted an Air Complaint Investigation. CCEDS Investigation Number: 1932351; Incident Numbers: 410856, 410859, 410860, 410861, 410862, 410864, 410865, 410866, 410867, 410868, and 410869.

On July 13, 2023, through July 27, 2023, the TCEQ conducted an Onsite Follow-up Investigation and Complaint Investigation. CCEDS Investigation Number: 1917795; Incident Numbers: 408515, 408529, 408524, 408521, 409230, 408499, 408531, 408526, 408525, 408511, 408518, 408533, 408523, 408497, 408528, and 408508.

On February 7, 2023, through March 8, 2023, the TCEQ conducted a Complaint Investigation. CCEDS Investigation Number: 1880582; Incident Numbers: 396038, 397183, 396162, 396164, 396036, 396042, 396631, and 397169.

ADDITIONAL INFORMATION

Conclusions, Recommendations, and Current Enforcement Actions

Several of the ongoing violations documented in this investigation are also being addressed in a separate investigation and are listed in this additional issues section for reference. For more information, please refer to the Additional Issues section of this report.

The complainants will be provided with a final complaint letter and a copy of the investigation report. During the investigation, the regulated entity and complainant were provided a copy of our complaint policies and procedures by referring them to the TCEQ's complaint website <https://www.tceq.texas.gov/compliance/complaints>.

No Violations Associated to this Investigation

Additional Issues

Description Item 1

Additional Comments

The RE has continually failed to mitigate nuisance conditions caused by visible fugitive PM emissions, leading to adverse health effects and nuisance conditions in violation of 30 TAC §101.4, 30 TAC §116.115(c) NSR Permit No. 7537, Special Condition No. 25, and Texas Health and Safety Code §§382.085(a) and 382.085(b). During a February 8, 2024 observation period, visible PM emissions caused discomfort for an investigator assessing the complainant's residences neighboring the RE, with symptoms including dry throat and coughing. During the February 27, 2024 observation period, exposure to the PM emissions led to throat irritation and eye discomfort for an investigator. Complainants interviewed by TCEQ investigators described experiencing similar symptoms.

Description Item 2

Additional Comments

The RE has continually failed to prevent visible fugitive emissions from leaving the property in violation of Title 30 of the Texas Administrative Code (30 TAC) §116.115(c) NSR Permit No. 7537, Special Condition No. 6. More specifically, PM emissions were observed exiting Milwhite's property and entering the neighboring community on February 8, 15, and 27, 2024. This violation is ongoing and was also previously documented in prior investigations.

Description Item 3

Additional Comments

The RE failed to maintain a visible and/or audible warning device on each bulk storage silo to warn operators when the silos are full to prevent overloading in violation of 30 TAC §116.115(c) NSR Permit No. 7537, Special Condition No. 17. On February 13, 2024, Milwhite Plant Manager, Mr. Fernandez, stated that no such warning device was installed on the silos. In addition, he stated that the silos would overload when workers were not paying attention, particularly during late-night shifts.

Description Item 4

Additional Comments

The RE has continually failed to immediately clean up spillage of raw material generated during their operations in violation of 30 TAC §116.115(c) NSR Permit No. 7537, Special Condition No. 19. On February 12, 2024, multiple piles of spilled material were observed around the mills in the processing building. The next day, more piles, some up to two feet tall, were found under the silos. Barrel fans were blowing spilled material out of the processing building, causing significant visible fugitive PM emissions. On February 20, 2024, additional spills were documented around the mills, baghouses, beneath the duct system, and under the silos. As of May 6, 2024, large piles of spilled material were still observed beneath the silos.

Description Item 5

Additional Comments

The RE has continually failed to properly and effectively maintain all hooding, duct, and collection systems designed to capture fugitive visible PM emissions, resulting in visible fugitive PM emissions migrating from the Site to neighboring properties in violation of 30 TAC §116.115(c) NSR Permit No. 7537, Special Condition No. 23. On February 20, 2024, investigators documented PM escaping through holes in the duct system that transferred material from the processing building into the silos. Several holes were observed in the ducts transferring material between silos. As of May 6, 2024, the ducts responsible for transferring materials between silos remained unrepaired.

Description Item 6

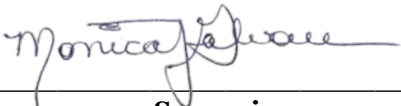
Additional Comments

The RE has continually failed to comply with the stockpiled material coverage area limit of 69,000 square feet in violation of 30 TAC §116.115(c) NSR Permit No. 7537, Special Condition No. 24. On May 6, 2024, investigator Cantu observed that the RE continued to stockpile above the permitted coverage area limit. The stockpiles appeared to be reduced by approximately 1/3 the size since measurements were taken on September 12, 2023. The September 12, 2023 measurements documented the RE stockpiling 105,510 square feet of material on property represented in NSR permit no. 7537. The RE was also stockpiling 41,230 square feet of material on an adjacent contiguous leased property not represented in NSR permit no. 7537. This violation is ongoing and was also previously documented in prior investigations.

Signed 

Environmental Investigator

Date 05/14/2024

Signed 

Supervisor

Date 5/15/2024

Attachments: (in order of final report submittal)

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

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

Attachments A - H

List of Attached files

- Video 1 - 02.08.2024.mp4
- Video 2 - 02.08.2024.mp4
- Video 3 - 02.12.2024.mp4
- Video 4 - 02.13.2024.mp4
- Video 5 - 02.20.2024.mp4
- Video 6 - 02.20.2024.mp4
- Video 7 - 02.27.2024.mp4
- Video 8 - 02.27.2024.mp4
- Video 9 - 02.28.2024.mp4

AFFIDAVIT OF VICTORIA CANTU

STATE OF TEXAS

§

COUNTY OF CAMERON

§

§

BEFORE ME, the undersigned authority, on this day personally appeared Victoria Cantu, a person whose identity is known to me. After I administered an oath to her, upon her oath, she stated:

“My name is Victoria Cantu. I am over the age of eighteen years, of sound mind, and capable of making this affidavit. I make this affidavit on the basis of my personal knowledge and facts I determined upon my investigations of this matter. The statements herein are true and correct.

I am employed by the Texas Commission on Environmental Quality (“TCEQ”) as an investigator. In this capacity, I have the authority to make this Affidavit. Furthermore, in this capacity, I am familiar with the property located at 5487 South Padre Island Highway, Brownsville, Cameron County, Texas 78521 (the “Site”). The Site is a raw material processing plant operated by Milwhite, Inc. (“Milwhite”), an entity regulated by TCEQ and possessing an air quality permit issued by TCEQ.

After receiving 10 formal complaints alleging that Milwhite was causing a nuisance due to excessive particulate matter (PM) dust emissions, TCEQ initiated a complaint investigation that began in February 2024. In total, TCEQ has received 45 air quality complaints regarding Milwhite in the past year. This investigation follows three previous investigations of Milwhite and the Site that documented numerous violations of the Texas Clean Air Act (“TCAA”), the rules and regulations drafted by TCEQ pursuant to the TCAA, and Milwhite’s air quality permit issued by TCEQ.

The February 2024 investigation remains open at this time as the reports generated as a result of the investigation are finalized. Throughout the February 2024 investigation, TCEQ personnel documented nuisance conditions at the Site and Milwhite’s continued failure to meet several Special Conditions of its TCEQ air quality permit. Below is a summary and non-exhaustive list of my relevant observations during the February 2024 investigation regarding violations of TCEQ rules and regulations at the Site:

- Milwhite has continually failed to prevent visible fugitive emissions from leaving the property in violation of the TCAA, TCEQ rules and regulations, and its air quality permit. More specifically, PM emissions were observed exiting Milwhite’s property and entering the neighboring community on February 8, 15, and 27, 2024. These violations are ongoing and were also previously documented in prior investigations.

- Milwhite has continually failed to mitigate nuisance conditions caused by visible fugitive PM emissions, leading to adverse health effects in violation of the TCAA, TCEQ rules and regulations, and its air quality permit. During a February 8, 2024 observation period, visible PM emissions caused discomfort for an investigator visiting complainants neighboring the Site, with symptoms including dry throat and coughing. During the February 27, 2024 observation period, PM emissions led to throat irritation and eye discomfort for an investigator. Complainants interviewed by TCEQ investigators described experiencing similar symptoms. These violations are ongoing and were also previously documented in prior investigations.
- Milwhite has continually failed to properly and effectively maintain all hooding, duct, and collection systems designed to capture fugitive visible PM emissions, resulting in visible fugitive PM emissions migrating from the Site to neighboring properties in violation of the TCAA, TCEQ rules and regulations, and its air quality permit. On February 20, 2024, investigators documented PM escaping through holes in the duct system that transferred material from the processing building into the silos. Several holes were observed in the ducts transferring material between silos during. As of May 6, 2024, the ducts responsible for transferring materials between silos remained unrepaired. This category of violations are ongoing and were also previously documented in prior investigations.
- Milwhite has continually failed to immediately clean up spillage of raw material generated during their operations in violation of the TCAA, TCEQ rules and regulations, and its air quality permit. On February 12, 2024, multiple piles of spilled material were observed around the mills in the processing building. The next day, more piles, some up to two feet tall, were found under the silos. Barrel fans were blowing spilled material out of the processing building, causing significant visible fugitive PM emissions. On February 20, 2024, additional spills were documented around the mills, baghouses, beneath the duct system, and under the silos. As of May 6, 2024, large piles of spilled material were still present beneath the silos. This category of violations are ongoing and were also previously documented in the prior investigations.

The summary and list of observations above is not exhaustive. I am currently preparing investigative reports addressing all violations of the TCAA, TCEQ rules and regulations, and its air quality permit observed at the Site during the February 2024 investigation. The investigative reports and related documentation for the February 2024 investigation will, upon completion, be sent to the Office of the Attorney General for further enforcement action.

I gained personal knowledge of the facts herein through my personal observations during my investigations of the Site, the observations of other TCEQ investigators regarding the Site, a review of records related to the Site maintained by the TCEQ, and the records and other information provided to the TCEQ by the owners and operators of the Site. Based on such personal knowledge, the facts presented above are true and correct.”

Victoria Cantu

VICTORIA CANTU
Environmental Investigator
Texas Commission on Environmental Quality

SWORN TO and SUBSCRIBED before me on the 14th day of May 2024, to certify which witness by my hand and official seal.

(seal)



Notary without Bond

P Rodriguez

Notary Public in and for the State of Texas

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Lik Irene Tong on behalf of Ian Lancaster

Bar No. 24097964

irene.tong@oag.texas.gov

Envelope ID: 88168584

Filing Code Description: Petition

Filing Description: ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF

Status as of 5/28/2024 2:33 PM CST

Associated Case Party: THE STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Ian Lancaster		ian.lancaster@oag.texas.gov	5/28/2024 1:22:46 PM	SENT
irene tong		irene.tong@oag.texas.gov	5/28/2024 1:22:46 PM	SENT