

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-0904-MLM-E **TCEQ ID:** RN101638906 **CASE NO.:** 35994

**RESPONDENT NAME:** LUFKIN CREOSOTING CO., INC.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Lufkin Creosoting, 5865 South US Highway 69, Lufkin, Angelina County</p> <p><b>TYPE OF OPERATION:</b> Wood preserving facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 1, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-4492; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Danny Vines, Executive Vice President, LUFKIN CREOSOTING CO., INC., P.O. Box 1207, Lufkin, Texas 75902  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 31, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 18, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to limit the storage of hazardous waste to 90 days or less. Specifically, the investigator documented a 25 cubic yard container of hazardous waste (F034) in the container storage area at the Facility which had a beginning accumulation date of May 7, 2007 [30 TEX. ADMIN. CODE § 335.69(a)(1)(A)].</p> <p>2) Failure to properly complete manifests. Specifically, waste manifest AR-1473109 and waste manifest AR-1473113 were missing information regarding the number of containers and waste codes for the waste being disposed [30 TEX. ADMIN. CODE § 335.10(c) and 40 CODE OF FEDERAL REGULATIONS § 262.20(a)].</p> <p>3) Failure to provide records documenting personnel training [30 TEX. ADMIN. CODE §§ 335.152(a)(1) and 335.69(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 264.16(d)(3) and (e)].</p> <p>4) Failure to provide sufficient cover for hazardous waste containers. Specifically, a 25 yard roll-off bin containing F034 hazardous waste was covered with a tarpaulin which was held down by bungee cords. This covering was inadequate to prevent leakage from the container should it be tipped over [30 TEX. ADMIN. CODE §§ 335.112(a)(8) and 335.69(a)(1)(A) and 40 CODE OF FEDERAL REGULATIONS §</p>	<p><b>Total Assessed:</b> \$20,205</p> <p><b>Total Deferred:</b> \$4,041  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$8,082</p> <p><b>Total Paid to General Revenue:</b> \$8,082</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Submitted corrected copies of manifests AR-1473109 and AR-1473113, as documented in a letter to the TCEQ dated March 5, 2008;</p> <p>b. Provided copies of employee training records, as documented in a letter to the TCEQ dated March 5, 2008;</p> <p>c. Discontinued the use of roll-off containers to manage waste and created two eight drum container storage areas, as documented in a letter to the TCEQ dated March 5, 2008;</p> <p>d. Discontinued the use of the public water supply and contracted with a water company to provide bottled water for its employees, as documented in a letter to the TCEQ dated March 5, 2008; and</p> <p>e. Disposed of 25 cubic yards of F034 listed waste at an approved disposal facility as indicated in Manifest No. 000371397GBF dated March 13, 2008 and submitted to the TCEQ on April 11, 2008.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p>

<p>265.173(a)].</p> <p><b>WATER</b></p> <p>5) Failure to have authorization prior to using a public water supply system. Specifically, the Respondent was using an on-site well to distribute potable water to more than 25 employees for more than 60 days during a calendar year [30 TEX. ADMIN. CODE § 290.40(g)].</p>		
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Additional ID No(s): SWR31832, Air New Source Permits 8262 and 8264, and Stormwater TXR05L956



Attachment A  
Docket Number: 2008-0904-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: LUFKIN CREOSOTING CO., INC.  
Payable Penalty Amount: Sixteen Thousand One Hundred Sixty-Four Dollars (\$16,164)  
SEP Amount: Eight Thousand Eighty-Two Dollars (\$8,082)  
Type of SEP: Pre-approved  
Third-Party Recipient: Angelina Beautiful Clean  
Location of SEP: Angelina County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to collect and properly dispose of illegally dumped waste. Eligible sites will be limited to areas where a responsible party cannot be identified and where there is no pre-existing obligation to clean up the site by the owner.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of waste which will help prevent human health concerns associated with illegally dumped waste.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.



LUFKIN CREOSOTING CO., INC.  
Agreed Order – Attachment A

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Valena Spradley  
Chairman of the Board  
Angelina Beautiful Clean  
1615 South Chestnut  
Lufkin, Texas 75901

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.



**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	22-Apr-2008	<b>Screening</b>	2-Jun-2008	<b>EPA Due</b>	
	<b>PCW</b>	2-Jun-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	LUFKIN CREOSOTING CO., INC.
<b>Reg. Ent. Ref. No.</b>	RN101638906
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	35994	<b>No. of Violations</b>	1
<b>Docket No.</b>	2008-0904-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Enf. Coordinator</b>	Michael Meyer
<b>Multi-Media</b>	Industrial and Hazardous Waste	<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$200
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$4
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Notes: There was one previous NOV for dissimilar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	25.0% Reduction	<b>Subtotal 5</b>	\$50
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes: Compliance was achieved by March 13, 2008, prior to the Notice of Enforcement letter.

<b>Total EB Amounts</b>	\$1,891	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Approx. Cost of Compliance: \$1,800  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$154
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	1227.9%	<b>Adjustment</b>	\$1,891
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to capture the avoided cost for Violation No. 1.

<b>Final Penalty Amount</b>	\$2,045
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,045
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$409
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$1,636
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<b>Screening Date</b> 2-Jun-2008	<b>Docket No.</b> 2008-0904-MLM-E	<b>PCW</b>
<b>Respondent</b> LUFKIN CREOSOTING CO., INC.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 35994		<i>PCW Revision April 29, 2008</i>
<b>Reg. Ent. Reference No.</b> RN101638906		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Michael Meyer		

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 2%

**>> Repeat Violator (Subtotal 3)**

<span style="border: 1px solid black; padding: 2px;">No</span>			<b>Adjustment Percentage (Subtotal 3)</b> <span style="border: 1px solid black; padding: 2px;">0%</span>
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**>> Compliance History Person Classification (Subtotal 7)**

<span style="border: 1px solid black; padding: 2px;">Average Performer</span>			<b>Adjustment Percentage (Subtotal 7)</b> <span style="border: 1px solid black; padding: 2px;">0%</span>
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**>> Compliance History Summary**

<b>Compliance History Notes</b>	There was one previous NOV for dissimilar violations.
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**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 2%

<b>Screening Date</b>	2-Jun-2008	<b>Docket No.</b>	2008-0904-MLM-E	<b>PCW</b>
<b>Respondent</b>	LUFKIN CREOSOTING CO., INC.	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	35994	<i>PCW Revision April 29, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN101638906			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Michael Meyer			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 290.40(g)			
<b>Violation Description</b>	Failed to have authorization prior to using a public water supply system, as documented during an investigation conducted on January 31, 2008. Specifically, the Respondent was using an on-site well to distribute potable water to more than 25 employees for more than 60 days during a calendar year.			
<b>Base Penalty</b>				\$1,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual				
Potential				Percent	0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor		
	X			Percent	10%

Matrix Notes: 100 percent of the rule requirement was not met.

Adjustment: \$900

\$100

Violation Events

Number of Violation Events: 2      34 Number of violation days

mark only one with an x

daily	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty: \$200

Two monthly events are recommended from the January 31, 2008 investigation to the date of compliance (March 5, 2008).

Economic Benefit (EB) for this violation      Statutory Limit Test

Estimated EB Amount: \$1,891      Violation Final Penalty Total: \$2,045

This violation Final Assessed Penalty (adjusted for limits): \$2,045

### Economic Benefit Worksheet

**Respondent:** LUFKIN CREOSOTING CO., INC.  
**Case ID No.:** 35994  
**Reg. Ent. Reference No.:** RN101638906  
**Media:** Public Water Supply  
**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,800	31-Jan-2008	5-Mar-2008	1.01	\$91	\$1,800	\$1,891
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The estimated cost for the Respondent to discontinue use of the public water supply and to provide bottled water to its employees. The estimate is based on 150 gallons per month at a cost of one dollar per gallon times 12 months. The Date Required is the January 31, 2008 investigation and the Final Date is the date compliance documentation was submitted to the TCEQ.

Approx. Cost of Compliance	\$1,800	<b>TOTAL</b>	\$1,891
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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

<b>DATES</b>	<b>Assigned</b>	22-Apr-2008			
	<b>PCW</b>	2-Jun-2008	<b>Screening</b>	2-Jun-2008	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	LUFKIN CREOSOTING CO., INC.				
<b>Reg. Ent. Ref. No.</b>	RN101638906				
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Major		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	35994	<b>No. of Violations</b>	4		
<b>Docket No.</b>	2008-0904-MLM-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Industrial and Hazardous Waste	<b>Enf. Coordinator</b>	Michael Meyer		
<b>Multi-Media</b>	Public Water Supply	<b>EC's Team</b>	Enforcement Team-7		
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$22,700</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,135</b>
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**Notes** There was one previous NOV for same or similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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**Notes** The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	25.0% Reduction	<b>Subtotal 5</b>	<b>\$5,675</b>
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	<b>Before NOV</b>	<b>NOV to EDPRP/Settlement Offer</b>
<b>Extraordinary</b>		
<b>Ordinary</b>	X	
<b>N/A</b>		(mark with x)

**Notes** Compliance was achieved by March 13, 2008, prior to the Notice of Enforcement.

<b>Total EB Amounts</b>	\$34	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
<b>Approx. Cost of Compliance</b>	\$6,225	*Capped at the Total EB \$ Amount		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$18,160</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$18,160

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$18,160</b>
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	<b>-\$3,632</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$14,528</b>
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**Screening Date** 2-Jun-2008

**Docket No.** 2008-0904-MLM-E

**PCW**

**Respondent** LUFKIN CREOSOTING CO., INC.

Policy Revision 2 (September 2002)

**Case ID No.** 35994

PCW Revision April 29, 2008

**Reg. Ent. Reference No.** RN101638906

**Media [Statute]** Industrial and Hazardous Waste

**Enf. Coordinator** Michael Meyer

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

There was one previous NOV for same or similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

<b>Screening Date</b> 2-Jun-2008	<b>Docket No.</b> 2008-0904-MLM-E	<b>PCW</b>
<b>Respondent</b> LUFKIN CREOSOTING CO., INC.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35994	<i>PCW Revision April 29, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN101638906		
<b>Media [Statute]</b> Industrial and Hazardous Waste		
<b>Enf. Coordinator</b> Michael Meyer		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 335.69(a)(1)(A)	
<b>Violation Description</b>	Failed to limit the storage of hazardous waste to 90 days or less, as documented during an investigation conducted on January 31, 2008. Specifically, the investigator documented a 25 cubic yard container of hazardous waste (F034) in the container storage area at the Facility which had a beginning accumulation date of May 7, 2007.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

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

OR	<b>Harm</b>					
		Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to pollutants which would exceed protective levels.				

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

*mark only one with an x*

**Violation Base Penalty**

Two monthly events are recommended from the January 31, 2008 investigation to the date of compliance (March 13, 2008).

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$29"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$8,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$8,000"/>	

### Economic Benefit Worksheet

**Respondent** LUFKIN CREOSOTING CO., INC.

**Case ID No.** 35994

**Reg. Ent. Reference No.** RN101638906

**Media** Industrial and Hazardous Waste

**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$5,000	31-Jan-2008	13-Mar-2008	0.12	\$29	n/a	\$29
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and properly dispose of 25 cubic yards of F034 listed hazardous waste. The Date Required is the January 31, 2008 investigation and the Final Date is March 13, 2008, the date the waste was transported for disposal as indicated by Manifest 000371397GBF.

**Avoided Costs**

**ANNUALIZE: [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$29

**Screening Date:** 2-Jun-2008 **Docket No.** 2008-0904-MLM-E **PCW**  
**Respondent:** LUFKIN CREOSOTING CO., INC. *Policy Revision 2 (September 2002)*  
**Case ID No.:** 35994 *PCW Revision April 29, 2008*  
**Reg. Ent. Reference No.:** RN101638906  
**Media [Statute]:** Industrial and Hazardous Waste  
**Enf. Coordinator:** Michael Meyer

**Violation Number:** 2  
**Rule Cite(s):** 30 Tex. Admin. Code § 335.10(c) and 40 Code of Federal Regulations § 262.20(a)  
**Violation Description:** Failed to properly complete manifests, as documented during an investigation conducted on January 31, 2008. Specifically, waste manifest AR-1473109 and waste manifest AR-1473113 were missing information regarding the number of containers and waste codes for the waste being disposed.

**Base Penalty:** \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Release	Major	Moderate	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
			x	1%

**Matrix Notes:** Greater than 70 percent of the rule requirement was met.

**Adjustment:** \$9,900

\$100

Violation Events

Number of Violation Events: 2 Number of violation days: 1

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty:** \$200

One single event is recommended for each manifest with missing information.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$0

Violation Final Penalty Total: \$160

This violation Final Assessed Penalty (adjusted for limits): \$160

### Economic Benefit Worksheet

**Respondent:** LUFKIN CREOSOTING CO., INC.  
**Case ID No.:** 35994  
**Reg. Ent. Reference No.:** RN101638906  
**Media:** Industrial and Hazardous Waste  
**Violation No.:** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$25	31-Jan-2008	5-Mar-2008	0.09	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly complete and submit two manifests (AR-1473109 and AR-1473113) to the TCEQ. The Date Required is the date of the investigation and the Final Date is the date compliance documentation was submitted to the TCEQ.

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$25

**TOTAL:** \$0

<b>Screening Date</b> 2-Jun-2008	<b>Docket No.</b> 2008-0904-MLM-E	<b>PCW</b>
<b>Respondent</b> LUFKIN CREOSOTING CO., INC.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 35994		<i>PCW Revision April 29, 2008</i>
<b>Reg. Ent. Reference No.</b> RN101638906		
<b>Media [Statute]</b> Industrial and Hazardous Waste		
<b>Enf. Coordinator</b> Michael Meyer		
<b>Violation Number</b> <input type="text" value="3"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code §§ 335.152(a)(1) and 335.69(a)(4) and 40 Code of Federal Regulations § 264.16(d)(3) and (e)"/>	
<b>Violation Description</b>	<input type="text" value="Failed to provide records documenting personnel training, as documented during an investigation conducted on January 31, 2008."/>	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
OR	<b>Harm</b>	
	Major    Moderate    Minor	
	Actual <input type="text"/> <input type="text"/> <input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
Potential <input type="text"/> <input type="text"/> <input type="text"/>		
<b>&gt;&gt; Programmatic Matrix</b>		
	<b>Falsification</b>	
	Major    Moderate    Minor	
	<input type="text"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<b>Percent</b> <input type="text" value="25%"/>
<b>Matrix Notes</b>	<input type="text" value="100 percent of the rule requirement was not met."/>	
	<b>Adjustment</b>	<input type="text" value="\$7,500"/>
		<input type="text" value="\$2,500"/>
<b>Violation Events</b>		
<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b> <input type="text" value="1"/>
<i>mark only one with an x</i>	daily <input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$2,500"/>
	monthly <input type="text"/>	
	quarterly <input type="text"/>	
	semiannual <input type="text"/>	
	annual <input type="text"/>	
	single event <input checked="" type="checkbox"/>	
	<input type="text" value="One single event is recommended."/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b>	<input type="text" value="\$1"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,000"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,000"/>

### Economic Benefit Worksheet

**Respondent** LUFKIN CREOSOTING CO., INC.  
**Case ID No.** 35994  
**Reg. Ent. Reference No.** RN101638906  
**Media** Industrial and Hazardous Waste  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$200	31-Jan-2008	5-Mar-2008	0.09	\$1	n/a	\$1
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide employee training records. The Date Required is the January 31, 2008 investigation and the Final Date is the date compliance documentation was submitted to the TCEQ.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$1

<b>Screening Date</b> 2-Jun-2008	<b>Docket No.</b> 2008-0904-MLM-E	<b>PCW</b>
<b>Respondent</b> LUFKIN CREOSOTING CO., INC.	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35994	<i>PCW Revision April 29, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN101638906		
<b>Media [Statute]</b> Industrial and Hazardous Waste		
<b>Enf. Coordinator</b> Michael Meyer		
<b>Violation Number</b>	4	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 335.112(a)(8) and 335.69(a)(1)(A) and 40 Code of Federal Regulations § 265.173(a)	
<b>Violation Description</b>	Failed to provide sufficient cover for hazardous waste containers, as documented during an investigation conducted on January 31, 2008. Specifically, a 25 yard roll-off bin containing F034 hazardous waste was covered with a tarpaulin which was held down by bungee cords. The covering was inadequate to prevent leakage from the container should it be tipped over.	
<b>Base Penalty</b>		\$10,000

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	<b>Actual</b>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	<b>Potential</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				<b>Percent</b> <input type="text" value="50%"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="0%"/>

**Matrix Notes** Human health or the environment will or could be exposed to significant amounts of pollutants which would exceed protective levels.

**Adjustment**

\$5,000

**Violation Events**

**Number of Violation Events**  **Number of violation days**

<i>mark only one with an x</i>	daily	<input type="checkbox"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>

**Violation Base Penalty**

Two monthly events are recommended from the January 31, 2008 investigation to the date of compliance (March 5, 2008).

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

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

**Respondent** LUFKIN CREOSOTING CO., INC.  
**Case ID No.** 35994  
**Reg. Ent. Reference No.** RN101638906  
**Media** Industrial and Hazardous Waste  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Item Description</b> No commas or \$						

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	31-Jan-2008	5-Mar-2008	0.09	\$5	n/a	\$5

Notes for DELAYED costs

The estimated cost for to provide a covering for a 25 cubic yard roll-off bin which will prevent the container from leaking in the event the container is tipped over. The Date Required is the January 31, 2008 investigation date and the Final Date is the date compliance documentation was submitted to the TCEQ.

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$5

## Compliance History

Customer/Respondent/Owner-Operator:	CN600880728 LUFKIN CREOSOTING CO., INC.	Classification: AVERAGE	Rating: 2.25
Regulated Entity:	RN101638906 LUFKIN CREOSOTING	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD008063661
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31832
	AIR NEW SOURCE PERMITS	PERMIT	8262
	AIR NEW SOURCE PERMITS	PERMIT	8264
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	AC0014H
	AIR NEW SOURCE PERMITS	AFS NUM	4800500013
	STORMWATER	PERMIT	TXR05L956
	IHW CORRECTIVE ACTION	ID NUMBER	T1667
Location:	5865 S US HIGHWAY 69, LUFKIN, TX, 75901		Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	June 08, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 09, 2003 to June 08, 2008		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Michael Meyer Phone: (512) 239-4492

### Site Compliance History Components

- |  |            |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes        |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No         |
| 3. If Yes, who is the current owner?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1 07/09/2004 (275621)

2 04/18/2008 (640582)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 07/09/2004 (275621)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter A 335.10(b)(19)  
30 TAC Chapter 335, SubChapter A 335.10(b)(22)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT B 262.20(a)

Description: Failure to properly complete waste manifests, AR-1473109 and AR-1473113.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(4)  
30 TAC Chapter 335, SubChapter F 335.152(a)(1)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(4)  
40 CFR Chapter 264, SubChapter I, PT 264, SubPT B 264.16(d)(3)

Description: Failure to record description of amount of training for employee, Cout Perry.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(4)  
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(4)  
Description: Failure to document and record training given to each employee.

F. Environmental audits.  
N/A

G. Type of environmental management systems (EMSs).  
N/A

H. Voluntary on-site compliance assessment dates.  
N/A

I. Participation in a voluntary pollution reduction program.  
N/A

J. Early compliance.  
N/A

Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
LUFKIN CREOSOTING CO., INC.  
RN101638906

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

## AGREED ORDER DOCKET NO. 2008-0904-MLM-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding LUFKIN CREOSOTING CO., INC. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 341 and 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wood preserving facility at 5865 South US Highway 69 in Lufkin, Angelina County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Facility operated a public water supply that served at least 25 people per day for at least 60 days per year.
4. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 23, 2008.
6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



7. An administrative penalty in the amount of Twenty Thousand Two Hundred Five Dollars (\$20,205) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Thousand Eighty-Two Dollars (\$8,082) of the administrative penalty and Four Thousand Forty-One Dollars (\$4,041) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Eight Thousand Eighty-Two Dollars (\$8,082) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project.
8. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
9. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
10. The Executive Director recognizes that the Respondent the following corrective measures at the Facility:
  - a. Submitted corrected copies of manifests AR-1473109 and AR-1473113, as documented in a letter to the TCEQ dated March 5, 2008;
  - b. Provided copies of employee training records, as documented in a letter to the TCEQ dated March 5, 2008;
  - c. Discontinued the use of roll-off containers to manage waste and created two eight drum container storage areas, as documented in a letter to the TCEQ dated March 5, 2008;
  - d. Discontinued the use of the public water supply and contracted with a water company to provide bottled water for its employees, as documented in a letter to the TCEQ dated March 5, 2008;
  - e. Disposed of 25 cubic yards of F034 listed waste at an approved disposal facility as indicated in Manifest No. 000371397GBF dated March 13, 2008 and submitted to the TCEQ on April 11, 2008.
11. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
12. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
13. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.



## II. ALLEGATIONS

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

1. Failed to limit the storage of hazardous waste to 90 days or less, in violation of 30 TEX. ADMIN. CODE § 335.69(a)(1)(A), as documented during an investigation conducted on January 31, 2008. Specifically, the investigator documented a 25 cubic yard container of hazardous waste (F034) in the container storage area at the Facility which had a beginning accumulation date of May 7, 2007.
2. Failed to properly complete manifests, in violation of 30 TEX. ADMIN. CODE § 335.10(c) and 40 CODE OF FEDERAL REGULATIONS § 262.20(a), as documented during an investigation conducted on January 31, 2008. Specifically, waste manifest AR-1473109 and waste manifest AR-1473113 were missing information regarding the number of containers and waste codes for the waste being disposed.
3. Failed to provide records documenting personnel training, in violation of 30 TEX. ADMIN. CODE §§ 335.152(a)(1) and 335.69(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 264.16(d)(3) and (e), as documented during an investigation conducted on January 31, 2008.
4. Failed to provide sufficient cover for hazardous waste containers, in violation of 30 TEX. ADMIN. CODE §§ 335.112(a)(8) and 335.69(a)(1)(A) and 40 CODE OF FEDERAL REGULATIONS § 265.173(a), as documented during an investigation conducted on January 31, 2008. Specifically, a 25 yard roll-off bin containing F034 hazardous waste was covered with a tarpaulin which was held down by bungee cords. This covering was inadequate to prevent leakage from the container should it be tipped over.
5. Failed to have authorization prior to using a public water supply system, in violation of 30 TEX. ADMIN. CODE § 290.40(g), as documented during an investigation conducted on January 31, 2008. Specifically, the Respondent was using an on-site well to distribute potable water to more than 25 employees for more than 60 days during a calendar year.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: LUFKIN CREOSOTING CO., INC., Docket No. 2008-0904-MLM-E" to:



Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

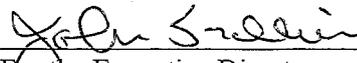
2. The Respondent shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I of Paragraph 7 above, Eight Thousand Eighty-Two Dollars (\$8,082) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

12/8/08  
Date

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

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

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

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

  
Signature

9-12-08  
Date

DANNY VINES  
Name (Printed or typed)  
Authorized Representative of  
LUFKIN CREOSOTING CO., INC.

Ex. Vice President  
Title

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



Attachment A

Docket Number: 2008-0904-MLM-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** LUFKIN CREOSOTING CO., INC.  
**Payable Penalty Amount:** Sixteen Thousand One Hundred Sixty-Four Dollars (\$16,164)  
**SEP Amount:** Eight Thousand Eighty-Two Dollars (\$8,082)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Angelina Beautiful Clean  
**Location of SEP:** Angelina County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to collect and properly dispose of illegally dumped waste. Eligible sites will be limited to areas where a responsible party cannot be identified and where there is no pre-existing obligation to clean up the site by the owner.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of waste which will help prevent human health concerns associated with illegally dumped waste.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.



**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Valena Spradley  
Chairman of the Board  
Angelina Beautiful Clean  
1615 South Chestnut  
Lufkin, Texas 75901

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.



**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

